

APPENDIX

A—CONSTITUTIONAL DOCUMENTS

I

THE EAST INDIA COMPANY ACT, 1772 (1).

(13, Geo. 3, C. 63).

AN ACT FOR ESTABLISHING CERTAIN REGULATIONS FOR THE BETTER MANAGEMENT OF THE AFFAIRS OF THE EAST INDIA COMPANY, AS WELL IN INDIA AS IN EUROPE.

[Preamble and Ss. 1-6, rep. as to U.K. 50 and 51 Vict., c. 59 (S.L.R.) Omitted as being obsolete and inapplicable to India].

A Governor-General and four Counsellors to be appointed

7. And for the better management of the said united Company's affairs in India, be it further enacted by the authority aforesaid, that for the government of the Presidency of Fort William in Bengal there shall be appointed a

Governor-General and four Counsellors ;

and that the whole civil and military government of the said Presidency, and also the ordering, management, and government of all the territorial acquisitions and revenues in the kingdoms of Bengal, Bihar and Orissa shall, during such time as the territorial acquisitions and revenues shall remain in

In whom the whole civil and military Government of Bengal, Bihar, and Orissa shall be vested

the possession of the said united Company, be and are hereby vested in the said Governor-General and Council of the said Presidency of Fort William in Bengal, in like manner to all intents and purposes whatsoever as the same now are or at any time heretofore might have been exercised by the President and Council or Select Committee in the said kingdom (2).

(1) This Act is commonly known as "the Regulating Act." For historical notes, see Ilbert's *Government of India*, pp. 43 et. seq, and 278-82.

(2). Modified by 33 Geo. 3, C. 52, S. 43.

8. And * * * * in all cases whatsoever wherein any difference of opinion shall arise upon any

In case of difference of opinion, the decision of the major part to be conclusive; and if votes equal, the Governor or eldest Counsellor to have a casting voice

question proposed in any consultation, the said Governor-General and Council shall be bound and concluded by the opinion and decision of the major part of those present: and if it shall happen that, by the death or removal, or by the absence of any of the Members of the said Council, such Governor-General and Council shall happen to be

equally divided, then and in every such case, the said Governor-General, or, in his absence, the eldest counsellor present, shall have a casting vote, and his opinion shall be decisive and conclusive.

9. The said Governor-General and Council or the major part of them, shall have, and they are hereby authorised to have power of superintending and controlling the government and management of the Presidencies of Madras, Bombay and Bencoolen respectively, so far and in so much as that it shall not be lawful for any President and Council of Madras, Bombay or Bencoolen for the time being to make any orders for commencing hostilities, or declaring or making war, against any Indian Princes or Powers, or for negotiating or concluding any treaty of peace or other treaty, with any such Indian Princes or Powers, without the consent and approbation of the said Governor-General and Council first had and obtained, except in such cases of imminent necessity as would render it dangerous to postpone such hostilities or treaties until the orders from the Governor-General and Council might arrive, and except in such cases where the said Presidents and Councils respectively shall have received special orders from the said united Company ;(1)

and any President and Council of Madras, Bombay or Bencoolen who shall offend in any of the cases aforesaid shall be liable to be suspended from his or their office by the order of the said Governor-General and Council ;

and every President and Council of Madras, Bombay and Bencoolen for the time being shall and they are hereby respectively directed and required to pay due obedience to such orders as they shall receive touching the premises from the said Governor-General and Council for the time being * * * * (2) ;

(1) Apparently superseded by 3 and 4 Will., 4, C. 85 but not repealed.

(2). Words repealed by 55 and 56. Vict., C. 19 (S. L. R.) have been omitted.

and the said Governor-General and Council for the time being shall and they are hereby directed and required to pay due obedience to all such orders as they shall receive from the Court of Directors of the said united Company, and to correspond from time to time, and constantly and diligently transmit to the said Court an exact particular of all advices or intelligence, and of all transactions and matters whatsoever, that shall come to their knowledge relating to the government, commerce, revenues or interest of the said united Company;

10. And * * * * Warren Hastings, Esquire, shall be the first Governor-General, and Lieutenant-General John Clavering, the Honorable George Monson, Richard Barwell, Esquire, and Phillip Francis, Esquire, shall be the four first Counsellors ;

and they and each of them shall hold and continue in his and their respective offices for and during the term of five years from the time of their arrival at Fort William in Bengal, and taking upon them the government of the said Presidency, * * * * (1) ;

and from and after the expiration of the said term of five years, the power of nominating and removing the succeeding Governor-General and Council shall be vested in the Directors of the said united Company. (2)

11. [Rep. as to U. K. 50 and 51. Vict. C. 59. (S. L. R.) omitted as being spent.]

12. [Rep. 55 and 56. Vict. C. 19 (S. L. R.)].

13. And whereas his late Majesty King George the Second did by his letters patent, bearing date at Westminster this eighth day of January, in the twenty-sixth year of his reign, grant into the said united Company of the merchants of England trading to the East Indies his royal charter, thereby amongst other things, constituting and establishing Courts of civil, criminal and ecclesiastical jurisdiction at the said united Company's respective settlements at Madras-patnam, Bombay on the Island of Bombay, and Fort William in Bengal, which said charter does not sufficiently provide for the due administration of justice in such manner as the state and condition of the Company's presidency of Fort William in Bengal, so long as the said Company

(1). Words repealed by 55 and 56. Vict., C. 19 (S. L. R.) have been omitted.

(2). Seems spent, but is probably the origin of the five years' rule which is still observed in practice.

shall continue in possession of the territorial acquisitions before mentioned, do and must require.

Be it therefore enacted by the authority aforesaid, that it shall

His Majesty may, by charter or letters patent, establish a Supreme Court of Judicature at Fort William, to consist of a Chief Justice and three other Judges

and may be lawful for His Majesty, by charter or letters patent under the great seal of Great Britain, to erect and establish a Supreme Court of Judicature at Fort William aforesaid to consist of a Chief Justice and three other Judges, being Barristers in England or Ireland, of not less than five years' standing to be named

from time to time by His Majesty, his heirs and successors ;

which said Supreme Court of Judicature shall have, and the same Court is hereby declared to have full power and authority to exercise and perform all civil, criminal, admiralty and ecclesiastical jurisdiction and to appoint such clerks and other ministerial officers of the said Court, with such reasonable salaries, as shall be approved of by the said Governor-General and Council ; and to form and establish such rules of practice, and such rules for the process of the said Court, and to do all such other things as shall be found necessary for the administration of justice and the due execution of all or any of the powers which, by the said charter, shall or may be granted and committed to the said Court ; and also shall be at all times a Court of record, and shall be a Court of oyer and terminer and gaol delivery, in and for the said town of Calcutta and factory of Fort William in Bengal aforesaid, and the limits thereof, and the factories subordinate thereto.

14. Provided nevertheless that the said new charter which His

Extent of the jurisdiction and powers of His Majesty's charter ;

Majesty is hereinbefore impowered to grant and the jurisdiction, powers, and authorities to be thereby established, shall and may extend to all British subjects who shall reside in the kingdoms or provinces of Bengal, Bihar and Orissa, or any of them, under the protection of the said united Company and the same charter shall be competent and effectual ;

and the Supreme Court of Judicature therein and thereby to be established shall have full power and authority to hear and determine all complaints against any of His Majesty's subjects for any crimes, misdemeanours or oppressions, committed or to be committed ; and also to entertain, hear and determine any suits or actions whatsoever against

any of His Majesty's subjects in Bengal, Bihar and Orissa, and any suit, action or complaint against any person who shall, at the time where such debt or cause of action or complaint shall have arisen, have been employed by or shall then have been, directly or indirectly, in the service of the said united Company, or of any of His Majesty's subjects.

15. Provided also, that the said Court shall not be competent to hear, try or determine any indictment or information against the said Governor-General, or any of the said Council for the time being, for any offence (not being treason or felony) which such Governor-General or any of the said Council shall or may be charged with having committed in Bengal, Bihar and Orissa.

16. [Rep. 55 and 56 Vict. C. 19 and as to B. I. by XIV of 1870 S. 1 and Sch.]

17. And it is hereby enacted and provided, that nothing in this Act shall extend to subject the person of the Governor-General, Council, etc., not subject to be arrested or imprisoned or Chief Justice and Judges respectively for the time being to be arrested or imprisoned upon any action, suit or proceeding in the said Court.

18 to 22. [repealed].

23. And * * * * no Governor-General, or any of the Council of the said united Company's Presidency of Fort William in Bengal or any Chief Justice or any of the Judges of the Supreme Court of Judicature at Fort William aforesaid, shall, directly or indirectly, by themselves or by any other person or persons for his or their use or on his or their behalf accept, receive or take, of or from any person or persons in any manner or on any account whatsoever, any present, gift, donation, gratuity, or reward pecuniary or otherwise, or any promise or engagement for any present gift, donation, gratuity or reward ; * * * * *

24. omitted.

25. omitted.

26 to 29. [Rep. 24 Geo. 3, Sess. 2 c. 25, S. 47 and 33 Geo. 3 c. 52, S. 46.]

30 and 31. [Rep.]

32. [Rep.].

33. [Rep.].

34 and 35. [Rep.].

36. [Rep.].

37. Provided always * * * * that the said Governor-General and Council shall, and they are hereby required, from time to time, to transmit copies of all such rules, ordinances, and regulations as they shall make and issue to one of His Majesty's principal Secretaries of State for the time being, and that it shall and may be lawful to and for His Majesty, his heir and successors, from time to time, as they shall think necessary, to signify to the said Company, under his or their sign manual, his or their disapprobation and disallowance of all such rules, ordinances and regulations ;

and that from and immediately after the time that such disapprobation shall be duly registered and published in the said Supreme Court of Judicature at Fort William in Bengal all such rules, ordinances, and regulations shall be null and void ;

but in case His Majesty, his heirs and successors, shall not, within the space of two years from the making of such rules, ordinances and regulations, signify his or their disapprobation or disallowance thereof as aforesaid, that then, and in that case, all such rules, ordinances and regulations shall be valid and effectual and have full force. (1)

38. [Rep.]

39. And * * * if any Governor-General, President or Governor or Council of any of the said Company's principal or other settlements in India, or the Chief Justice or any of the Judges of the said Supreme Court of Judicature to be by the said New Charter established or of any other Court in any of the said united Company's settlements, or any other person, or persons who now are or heretofore have been employed by or in the capacity or who have or claim or heretofore have had or claimed any power or authority or jurisdiction by or from the said united Company, or any of His Majesty's subjects residing in India shall commit any offence against

(1) Sec. 37 ought perhaps to have been repealed along with S. 36. Apparently superseded by 24 and 25 Vict. 67, S. 21.

this Act or shall have been or shall be guilty of any crime, misdemeanour or offence committed against any of His Majesty's subjects or any of the inhabitants of India, within their respective jurisdiction all such crimes, offences and misdemeanours may be respectively enquired of, heard, tried and determined in His Majesty's Court of King's Bench;

and all such persons so offending, and not having been before tried for the same offence in India shall on connection, in any such case as is not otherwise specially provided for by this Act be liable to such fine or corporal punishment as the said Court shall think fit, and moreover shall be liable, at the discretion of the said Court to be adjudged to be incapable of serving the said united Company in an office, civil or military ;

and all and every such crimes, offence and misdemeanours as aforesaid may be alleged to be committed, and may be laid, enquired of and tried, in the county of Middlesex.

40 (1). And whereas the provision made by former laws for the

<p>Manner of procedure in cases of indictments and informations laid, in the King's Bench</p>	<p>hearing and determining in England offences committed in India have been found ineffectual by reason of the difficulty of proving in this Kingdom matters done there;</p>
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Be it further enacted by the authority aforesaid, that in all cases of indictments or informations laid or exhibited in the said Court of King's Bench for misdemeanours or offences committed in India, it shall and may be lawful for His Majesty's said Court upon motion to be made on behalf of the prosecutor or the defendant or defendants ; to award a writ or writs of mandamus, requiring the Chief Justice and Judges of the said Supreme Court of Judicature for the time being, or the Judges of the Major's Court at Madras, Bombay or Bencoolen, as the case may require, who are hereby respectively authorised and require accordingly, to hold a Court with all convenient speed for the examination of witnesses, and of the agents or Counsel of all or any of the parties respectively, and to adjourn from time to time as occasion may require ; any such examination as aforesaid shall be then and there openly and publicly taken *viva voce* in the said Court, upon the respective oaths of witnesses and the oaths of skilful interpreters, administered according to the forms of their several religions ; and shall, by some sworn officer of such Court, be reduced into one or more writing or

1. Ss. 40-45 extended by 22 and 23 Vict., C. 21, S. 16, See Chitty's Statutes. Tit. Evidence ; Taylor on Evidence, Ed. 9, § 500.

writings on parchment in case any duplicate or duplicates should be required by or in behalf of the any parties interested, and shall be sent to His Majesty, in his Court of King's Bench closed up and under the seals of two or more of the Judges of the said Court and one or more of the said Judges shall deliver the same to the agent or agents of the party or parties requiring the same ; which said agent or agents (or in case of his or their death, the person into whose hands the same shall come), shall deliver the same from the hands of one or more of the Judges of such Court in India (or, if such agent be dead, in what manner the same came into his hands) ; and that the same has not been opened or altered since he so received it (which said oath such clerk in Court is hereby authorised and required to administer) ;

and such depositions, being duly taken and returned according to the true intent and meaning of this Act, shall be allowed and read, and shall be deemed as good and competent evidence as if such crimes or misdemeanours as aforesaid in His Majesty's said Court of King's Bench any law or usage to the contrary notwithstanding; and all parties concerned shall be entitled to take copies of such depositions at their own costs and charges.

41. And.....in case the said Chief Justice or Judges of the said Supreme Court of Judicature, or any of them for the time being, shall commit any offence against this Act, or be guilty of any corrupt practice or other crime, offence, or misdemeanour in the execution of their respective offices, it shall and may be lawful for His Majesty's said Court of King's Bench in England, upon an information or indictment laid or exhibited in the said Court for such crime, offence or misdemeanour, upon motion to be made in the said Court to award such writ or writs of mandamus as aforesaid, requiring the Governor-General and Council of the said United Company's Settlement at Fort William aforesaid, who are hereby respectively authorised and required accordingly, to assemble themselves in a reasonable time, and to cause all such proceedings to be had and made as are hereinbefore respectively directed and prescribed concerning the examination of witnesses ; and such examination so taken shall be returned and proceeded upon in the same manner in all respects as if the several directions hereinbefore prescribed and enacted in that behalf were again repeated.

Offences against this Act committed by the Chief Justices or Judges to be determined by the Court of King's Bench

II

THE GOVERNMENT OF INDIA ACT, 1833 (1)

(3 & 4, Will, 4, C. 85)

AN ACT FOR EFFECTING AN ARRANGEMENT WITH THE EAST INDIA COMPANY AND FOR THE BETTER GOVERNMENT OF HIS MAJESTY'S INDIAN TERRITORIES, TILL THE THIRTIETH DAY OF APRIL ONE THOUSAND EIGHT HUNDRED AND FIFTY-FOUR.

[28TH AUGUST, 1833.]

[*Preamble recites 53 Geo. 3, C. 155, and the consent of the "United Company of Merchants of England trading to the East Indies" to place their rights and property at the disposal of Parliament.*]

1. The territorial acquisitions and revenues mentioned or referred

The British territories in India to remain under the government of the Company till 30th April, 1854

to in the said Act at the fifty-third year of his late Majesty King George the third, together with the port and island of Bombay and all other territories now in the possession and under the government of the said Company except the island of St. Helena, shall remain and continue

under such management until the thirtieth day of April one thousand eight hundred and fifty-four;

and all the lands and hereditaments, revenues, rents, and profits

Real and personal property of the Company to be held in trust for the crown, for the service of India

of the said Company, and all the stores, merchandize, chattels, monies, debts, and real and personal estate whatsoever, except the said island of St. Helena and the stores and property thereon hereinafter mentioned, subject to the debts and

liabilities now affecting the same respectively, and the benefits of all contracts, covenants, and engagements, and all rights to fines, penalties, and forfeitures, and other emoluments whatsoever, which the said Company shall be seized or possessed of or entitled unto on the said twenty-second day of April one thousand eight hundred and thirty-four, shall remain and be vested in, and be held, received, and exercised respectively accordingly to the nature and quality, estate and interest, of and in the name respectively by the said Company, in trust for His

(1). The provisions of this statute except Ss. 81 to 86 may not be affected by legislation in India—See 24, 25 and Vict., C. 7. S. and 3 & 33 Vict., C. 98, S. 3. For digest and notes—See Ilbert's Government of India, pp. 299-355.

Majesty, his heirs and successors, for the service of the government of India, discharged of all claims of the said Company to any profit or advantage therefrom to their own use, except the dividend on their capital stock secured to them as hereinafter is mentioned, subject to such powers and authorities for the superintendence, direction and control over the acts, operations, and concerns of the said Company as have been already made or provided by any Act or Acts of Parliament in that behalf, or are made or provided by this Act.

2. * * * * all and singular the privileges, franchises, abilities, capacities, powers, authorities, whether military or civil, rights, remedies, methods of suits, penalties, forfeitures, disabilities, provisions, matters, and things whatsoever granted to or continued in the said United Company by the said Act of the fifty third year of King George the Third for and during the term limited by the said Act and all other enactments, provisions, matters and things contained in the said Act, or in any other Act or Acts whatsoever which are limited or may be construed to be limited, to continue for and during the term granted to the said Company by the said Act of the fifty third year of King George the Third, so far as the same or any of them are in force, and not repealed by or repugnant to the enactments hereinafter contained, and all powers of alienation and disposition, rights, franchises, and immunities, which the said United Company now have, shall continue and be in force, and may be exercised and enjoyed, as against all persons whomsoever, subject to the superintendence, direction and control mentioned until the thirtieth day of April one thousand eight hundred and fifty-four.

3 to 18. [Rep. 37 and 38. Vict., C. 35 (S. L. R.)].

19 [Rep. 53 and 54 Vict., C. 33 (S. L. R.)].

20 to 24. [Rep. 38 Vict., C. 35 (S. L. R.)].

25.....the said Board shall have and be invested with full power and authority to superintend, direct and control all acts, operations, and concerns of the said Company, which in any wise relate to or concern the government or revenue of the said territories or the property hereby vested in the said Company in trust

The Board of Commissioners to control all acts of the Company concerning India etc.

as aforesaid and all grants of salaries, gratuities and allowances and all other payments and charges whatever out of or upon the said revenues and property respectively except as hereinafter is mentioned. 26 to 35. [Rep. 37 and 38 Vict., C. 35 (S. L. R.)].

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III

THE GOVERNMENT OF INDIA ACT, 1858 (1)

(21 and 22 Vict., C. 106)

AN ACT FOR THE BETTER GOVERNMENT OF INDIA.
[2ND AUGUST, 1858].

Whereas by the Government of India Act, 1858, the territories in the possession and under the Government of the 16 and 17 Vict., East India Company were continued under such C. 95 Government, in trust for Her Majesty, until Parliament should otherwise provide, subject to the provisions of that Act, and of other Acts of Parliament, and the property and rights in the said Act referred to are held by the said Company in trust for Her Majesty for the purpose of the said Government :

And whereas it is expedient that the said territories should be governed by and in the name of Her Majesty * * * *

TRANSFER OF THE GOVERNMENT OF INDIA TO HER MAJESTY.

1. The Government of the territories now in the possession or under the Government of the East India Company and all powers in relation to Government vested in, or exercised by, the said Company in trust for Her Majesty, shall cease to be vested in, or exercised by, the said Company ;

And all territories in the possession or under the Government of the said Company, and all rights vested in or which if this Act had not been passed might have been exercised by the said Company in relation to any territories, shall become vested in Her Majesty, and be exercised in her name ;

(1). The provisions of this Statute cannot be affected by legislation in India—secs. 24 and 25, Vict., c. 67, s. 22. For digest and notes, see Ilbert's Government of India, pp. 309-313.

And for the purposes of this Act India shall mean the territories vested in Her Majesty as aforesaid, and all territories which may be come vested in Her Majesty by virtue of any such rights as aforesaid

India to be governed by and in the name of Her Majesty, &c.

2. India shall be governed by and in the name of Her Majesty ;

And all rights in relation to any territories which might have been exercised by the said Company if this Act had not been passed shall and may be exercised by and in the name of Her Majesty as rights incidental to the Government of India ;

And all the territorial and other revenues of or arising in India and all tributes and other payments in respect of any territories which would have been receivable by or in the name of the said Company if this Act had not been passed shall be received for and in the name of Her Majesty, and shall be applied and disposed of for the purposes of the Government of India alone, subject to the provisions of this Act.

Save as herein otherwise provided, one of Her Majesty's Principal Secretaries of State shall have and perform all such or the like powers and duties in anywise relating to the Government or revenues of India, and all such or the like powers over all officers appointed or continued under this Act, as might or should have been exercised or performed by the East India Company, or by the Court of Directors or Court or Proprietors of the said Company, either alone or by the direction or with the sanction or approbation of the Commissioners for the Affairs of India in relation to such government or revenues, and the officers and servants of the said Company respectively, and all such powers as might have been exercised by the said Commissioners alone ;

And any warrant or writing under Her Majesty's Royal Sign Manual which by the Government of India Act, 1854 (1), or otherwise, is required to be countersigned by the President of the Commissioners for the Affairs of India, shall in lieu of being so

Counter-signing of warrants, 17 & 18 Vict., C. 77

(1). S. 1 of the Government of India Act, 1854 (17 & 18 Vict. C. 77) which contained the provision referred to, was repealed as to U. K. by 55 & 56 Vict., C. 19 (S. L. R.).

countersigned be countersigned by one of Her Majesty's Principal Secretaries of State. * * *

4. * * * * any four of Her Majesty's Principal Secretaries of State for the time being, and any four of the Under Secretaries for the time being to Her Majesty's Principal Secretaries of State, may sit and vote as members of the House of Commons ;

Four Principal Secretaries of State and four Under Secretaries of State may sit as members in the House of Commons

But not more than four such Principal Secretaries and not more than four such Under Secretaries shall sit as members of the House of Commons at the same time.

5. [Rep. 41 and 42 Vict., C. 79 (S. L. R.)](1)

6. In case Her Majesty be pleased to appoint a fifth Principal Secretary of State, there shall be paid out of the revenues of India to such Principal Secretary of State and to his Under Secretaries respectively the like yearly salaries as may for the time being be paid to any other of such Secretaries of State and his Under Secretaries respectively.

Salaries of one Secretary of State and his Under Secretaries to be paid out of the revenues of India

COUNCIL OF INDIA

7. For purposes of this Act a Council shall be established, to consist of fifteen members, and to be styled the Council of India ;

Council of India established.

And henceforth the Council of India now bearing that name shall be styled the Council of the Governor-General of India.

8. [Rep. 41 & 42 Vict., C. 79 (S. L. R.).]

9. [Rep. 55 & 56 Vict., C. 19 (S. L. R.).]

10. The major part of the persons to be elected by the Court of Directors and the major part of the persons to be first appointed by Her Majesty after the passing of this Act to be members of the Council, shall be persons who shall have served or resided in India for ten years at the least, and (excepting in the case of late and present Directors and Officers on the Home establishment of the East India Company who shall have so served or

The major part of the Council to be persons who shall have served or resided ten years in India, &c.

(1). There appears to be a mistake in this connection in the Statutes revised in which 38 and 39 Vict., C. 66 (S. L. R.) is cited as the repealing enactment.

resided), shall not have last left India more than ten years next preceding the date of their appointment;

And no person other than a person so qualified shall be appointed or elected to fill any vacancy in the Council unless at the time of the appointment or election nine at the least of the continuing members of the Council be persons qualified as aforesaid.

11. Every member of the Council appointed or elected under this Act shall hold his office during good
 Tenure of office of Members of the Council behaviour;

Provided that it shall be lawful for Her Majesty to remove any such member from his office upon an address of both Houses of Parliament.

12. No member of the Council appointed or elected under this Act shall be capable of sitting or voting in
 Members of Council not to sit in Parliament Parliament.

13. There shall be paid to each member of the Council the
 Salaries of Members of Council yearly salary of one thousand two hundred pounds out of the revenues of India.

14. [Rep. 32 & 33 Vict., C. 97. s. 5.]

15. The Secretaries and other officers and servants on the Home
 Establishment of the Secretary of State in Council establishment of the said Company and on the establishment of the Commissioners for the Affairs of India, immediately after the commencement of this Act, shall on such commencement be and form the establishment of the Secretary of State in Council;

And the Secretary of State shall with all convenient speed make such arrangement of the said establishments, and such reductions therein, as may seem to him consistent with the due conduct of the public business, and shall within six months after the commencement of this Act submit a scheme for the permanent establishment to Her Majesty in Council.

And it shall be lawful for Her Majesty, by the advice of Her Privy Council, upon consideration of such scheme, to fix and declare what shall constitute and be the establishment of the Secretary of State in Council, and what salaries shall be paid to the persons on the establishment;

And the Order of Her Majesty in Council shall be laid before both Houses of Parliament within fourteen days after the making thereof, provided Parliament be then sitting, or otherwise within fourteen days after the next meeting thereof ;

And after such establishment has been formed by such Order in Council, no addition of persons shall be made to such establishment, nor any addition made to the salaries authorized by such Order, except by a similar Order in Council, to be laid in like manner before both Houses of Parliament.

16. After the first formation of the establishment it shall be lawful for the Secretary of State in Council to remove any officer or servant belonging thereto, and also to make all appointments and promotions to and in such establishment :

Removal of officers and supply of vacancies in the establishment

Provided, that the Order of Her Majesty in Council of the twenty-first day of May, one thousand eight hundred and fifty-five, or such other regulation as may be from time to time established by Her Majesty for examinations, certificates, probation, or other tests of fitness in relation to appointments to junior situations in the Civil Service, shall apply to such appointments on the said establishment.

17. [Rep. 41 and 42 Vict., C. 79 (S. L. R.).]

18. It shall be lawful for Her Majesty by warrant countersigned as aforesaid to grant to any such Secretary, officer or servant as aforesaid, retained on such last-mentioned establishment, such compensation, superannuation, or retiring allowance on his ceasing to hold office as might have been granted to him if this Act had not been passed ;

And the transfer of any person to the service of the Secretary of State in Council shall be deemed to be a continuance of his previous appointment or employment, and shall not prejudice any claims which he might have had in respect of length of service if his service under the said Company or Commissioners had continued ; and it shall be

4 & 5 Will 4, C. 24. lawful for Her Majesty, by warrant countersigned as aforesaid, to grant to any Secretary, officer or servant appointed on the said establishment after the first formation thereof, such compensation, superannuation, or retiring allowance as, under the Superannuation Act, 1834, or any other Act for the time being in force, concerning superannuations and other

allowances to persons having held civil offices in the public service, may be granted to persons appointed on the establishment of one of Her Majesty's Principal Secretaries of State.

DUTIES AND PROCEDURE OF THE COUNCIL

19. The Council shall, under the direction of the Secretary of State, and subject to the provisions of this Act
Duties of the Council, &c.
conduct the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India.

But every order or communication sent to India shall be signed by one of the Principal Secretaries of State ;

And, save as expressly provided by this Act, every order in the United Kingdom in relation to the Government of India under this Act shall be signed by such Secretary of State ;

And all despatches from Governments and Presidencies in India, and other despatches from India, which if this Act had not been passed should have been addressed to the Court of Directors or to their Secret Committee, shall be addressed to such Secretary of State.

20. It shall be lawful for the Secretary of State to divide the Council into Committees for the more convenient transaction of business, and from time to time to re-arrange such Committees, and to direct what departments of the business in relation to the Government of India under this Act shall be under such Committees respectively, and generally to direct the manner in which all such business shall be transacted.

Secretary of State to divide the Council into Committees, and to regulate the transaction of business
President and Vice-President of the Council
21. The Secretary of State shall be the President of the Council, with power to vote ;

And it shall be lawful for such Secretary of State in Council to appoint from time to time any member of such Council to be Vice-President thereof ;

And any such Vice-President may at any time be removed by the Secretary of State.

22. All powers by this Act required to be exercised by the Secretary of State in Council, and all powers of the Council, shall and may be exercised at meetings of such Council, at which not less than five members shall be present ;

And at every meeting the Secretary of State, or in his absence the Vice-President, if present, shall preside ; and in the absence of the Secretary of State and Vice-President, one of the members of the Council present shall be chosen by the members present to preside at the meeting :

And such Council may act notwithstanding any vacancy therein.

Meetings of the Council shall be convened and held when and as the Secretary of State shall from time to time direct :

Provided that one such meeting at least be held in every week.

23. At any meeting of the Council at which the Secretary of State is present, if there be a difference of opinion on any question other than the question of the election of a Member of Council, or other than any question with regard to which a majority of the votes at a meeting is hereinafter declared to be necessary, the determination of the Secretary of State shall be final ;

And in case of an equality of votes at any meeting of the Council, the Secretary of State, if present and in his absence the Vice-President, or presiding member, shall have a casting vote ;

And all acts done at any meeting of the Council in the absence of the Secretary of State, except the election of a Member of the Council, shall require the sanction or approval in writing of the Secretary of State ;

And in case of difference of opinion on any question decided at any meeting, the Secretary of State may require that his opinion and the reasons for the same be entered in the minutes of the proceedings, and any Member of the Council who may have been present at the meeting may require that his opinion, and any reasons for the same that he may have stated at the meeting, be entered in like manner.

24. Every order or communication proposed to be sent to India, and every order proposed to be made in the United Kingdom by the Secretary of State under this Act, shall, unless the same has been submitted to a meeting of the Council, be placed in the Council room for the perusal of all members of the Council during seven days before the sending or making thereof, except in the cases hereinafter provided ;

And it shall be lawful for any member of the Council to record in

a minute book to be kept for that purpose, his opinion with respect to each such order or communication, and a copy of every opinion so recorded shall be sent forthwith to the Secretary of State.

25. If a majority of the Council record as aforesaid their opinions against any act proposed to be done the Secretary of State shall, if he do not defer to the opinions of the majority, record his reasons for acting in opposition thereto.

26. Provided that where it appears to the Secretary of State that despatch of any communication, or the making of any order, not being an order for which a majority of the votes at a meeting is hereby made necessary, is urgently required, the communication may be sent or order given notwithstanding the same may not have been submitted to a meeting of the Council or deposited for seven days as aforesaid, the urgent reasons for sending or making the same being recorded by the Secretary of State, add notice thereof being given to every member of the Council, except in the cases hereinafter mentioned.

27. Provided also, that any order, not being an order for which a majority of votes at a meeting is hereby made necessary, which might, if this Act had not been passed, have been sent by the Commissioners for the Affairs of India, through the Secret Committee of the Court of Directors to Governments or Presidencies in India, or to the officers or servants of the said Company, may, after the commencement of this Act, be sent to such Governments or Presidencies, or to any officer or servant in India, by the Secretary of State without having been submitted to a meeting, or deposited for the perusal of the members of the Council, and without the reasons being recorded, or notice thereof given as aforesaid.

28. Any despatches to Great Britain which might, if this Act had not been passed, have been addressed to the Secret Committee of the Court of Directors, may be marked "secret" by the authorities sending the same;

And such despatches shall not be communicated to the Members of the Council, unless the Secretary of State shall so think fit and direct,

APPOINTMENTS AND PATRONAGE

29. The appointments of Governor-General of India* * *and

Appointments to be made by or with the approbation of Her Majesty
Governors of Presidencies in India now made by the Court of Directors with the approbation of Her Majesty, and the appointments of Advocate-General for the several Presidencies now made with the approbation of the Commissioners for the Affairs of India, shall be made by Her Majesty by warrant under Her Royal Sign Manual;

The appointment of the Lieutenant-Governors of provinces or territories shall be made by the Governor-General of India, subject to the approbation of Her Majesty; and all such appointments shall be subject to the qualifications now by law affecting such offices respectively.

30. All appointments to offices, commands and employments in

Appointments now made in India to continue to be made there
India, all promotions, which by law, or under any regulations, usage or custom, are now made by any authority in India, shall continue to be made in India by the like authority, and subject to the qualifications, conditions, and restrictions now affecting such appointments respectively;

But the Secretary of State in Council, with the concurrence of a majority of members present at a meeting, shall

Powers of Secretary of State in Council as to appointments, etc., in India
have the like power to make regulations for the division and distribution of patronage and power of nomination among the several authorities in India, and the like power of restoring to their stations, offices, or employments, officers, and servants suspended or removed by any authority in India, as might have been exercised by the said Court of Directors, with the approbation of the Commissioners for the Affairs of India, if this Act had not been passed.

31. [Rep. 41 and 42 Vict., C. 79 (S. L. R.).]

32. * * * * Regulations shall be made by the Secretary of State in Council, with the advice and assistance of the

Secretary of State in Council to make regulations for the admission of candidates to the Civil Service of India

Commissioners for the time being, acting in execution of Her Majesty's Order in Council of twenty-first May one thousand eight hundred and fifty-five for regulating the admission of persons to the Civil Service of the Crown, for

admitting all persons being natural born subjects of Her Majesty (and of such age and qualification as may be prescribed in this behalf) who may be desirous of becoming candidates for appointment to the Civil Service of India to be examined as candidates accordingly, and for prescribing the branches of knowledge in which such candidates shall be examined, and generally for regulating and conducting such examinations, under the superintendence of the said last mentioned Commissioners or of the person for the time being entrusted with the carrying out of such regulations as may be, from time to time, established by Her Majesty for examination, certificate, or other test of fitness in relation to appointments to junior situations in the Civil Service of the Crown :

And the candidates who may be certified by the said Commissioners or other persons as aforesaid, to be entitled under such regulations shall be recommended for appointment according to the order of their proficiency as shown by such examinations ;

And such persons only as shall have been so certified as aforesaid shall be appointed or admitted to the Civil Service of India by the Secretary of State in Council :

Provided always, that all regulations to be made by the said Secretary of State in Council under this Act shall be laid before Parliament within fourteen days after the making thereof, if Parliament be sitting, and if Parliament be not sitting then, within fourteen days after the next meeting thereof.

Regulations made by Secretary of State to be laid before Parliament

33. All appointments to cadetships, naval and military, and all admissions to service not herein otherwise provided for, shall be vested in Her Majesty ;

Other appointments and admissions to service vested in Her Majesty

And the names of persons to be from time to time recommended for such cadetships and service shall be submitted to Her Majesty by the Secretary of State.

34. * * * Regulations shall be made for admitting any persons being natural-born subjects of Her Majesty (and of such age and qualifications as may be prescribed in this behalf) who may be desirous of becoming candidates for cadetships in the engineers and in the artillery, to be examined as candidates accordingly, and for prescribing the branches of knowledge in which such candidates shall

Regulations to be made for admitting persons to be examined for cadetships in Engineers and Artillery

examined, and generally for regulating and conducting such nominations.

35. Not less than one-tenth of the whole number of persons to be recommended in any year for military cadetships (other than cadetships in the engineers and artillery) shall be selected according to such regulations as the Secretary of State in Council may from time to time make in this behalf from among the sons of persons who have served in India in the military or civil services of Her Majesty or of the East India Company¹.

36. Except as aforesaid, all persons to be recommended for military cadetships shall be nominated by the Secretary of State and Members of Council, so that out of seventeen nominations the Secretary of State shall have two and each Member of Council shall have one:

But no persons so nominated shall be recommended unless the nomination be approved of by the Secretary of State in Council.

37. Save as hereinbefore provided, all powers of making regulations in relation to appointments and admissions to service and other matters connected therewith, and of altering or revoking such regulations, which, if this Act had not been passed, might have been exercised by the Court of Directors or Commissioners for the Affairs of India, may be exercised by the Secretary of State in Council;

And all regulations in force at the time of the commencement of this Act in relation to the matters aforesaid shall remain in force, subject nevertheless to alteration or revocation by the Secretary of State in Council as aforesaid.

38. Any writing under the Royal Sign Manual, renewing or dismissing any person holding any office, employment, or commission, civil or military, in India, of which, if this Act had not been passed, a copy would have been required to be transmitted or delivered within eight days after being signed by Her Majesty to the chairman or deputy chairman of the

Removal of officer by Her Majesty to be communicated to Secretary of State in Council

¹ But see further 22 and 23 Vict., C. 41.

admitting all persons being natural born subjects of Her Majesty (and of such age and qualification as may be prescribed in this behalf) who may be desirous of becoming candidates for appointment to the Civil Service of India to be examined as candidates accordingly, and for prescribing the branches of knowledge in which such candidates shall be examined, and generally for regulating and conducting such examinations, under the superintendence of the said last-mentioned Commissioners or of the person for the time being entrusted with the carrying out of such regulations as may be, from time to time, established by Her Majesty for examination, certificate, or other test of fitness in relation to appointments to junior situations in the Civil Service of the Crown :

And the candidates who may be certified by the said Commissioners or other persons as aforesaid, to be entitled under such regulations shall be recommended for appointment according to the order of their proficiency as shown by such examinations ;

And such persons only as shall have been so certified as aforesaid shall be appointed or admitted to the Civil Service of India by the Secretary of State in Council :

Provided always, that all regulations to be made by the said Secretary of State in Council under this Act shall be laid before Parliament within fourteen days after the making thereof, if Parliament be sitting, and if Parliament be not sitting then, within fourteen days after the next meeting thereof.

Regulations made by Secretary of State to be laid before Parliament

33. All appointments to cadetships, naval and military, and all admissions to service not herein otherwise provided for, shall be vested in Her Majesty ;

Other appointments and admissions to service vested in Her Majesty

And the names of persons to be from time to time recommended for such cadetships and service shall be submitted to Her Majesty by the Secretary of State.

34. * * * * Regulations shall be made for admitting any persons being natural-born subjects of Her Majesty (and of such age and qualifications as may be prescribed in this behalf) who may be desirous of becoming candidates for cadetships in the engineers and in the artillery, to be examined as candidates accordingly, and for prescribing the branches of knowledge in which such candidates shall

Regulations to be made for admitting persons to be examined for cadetships in Engineers and Artillery

be examined, and generally for regulating and conducting such examinations.

35. Not less than one-tenth of the whole number of persons to be recommended in any year for military cadet-

Not less than one-tenth of persons recommended for military cadetships to be selected from sons of persons who have served in India

ships (other than cadetships in the engineers and artillery) shall be selected according to such regulations as the Secretary of State in Council may from time to time make in this behalf from among the sons of persons who have served

in India in the military or civil services of Her Majesty or of the East India Company 1.

36. Except as aforesaid, all persons to be recommended for military cadetships shall be nominated by the Secretary of State and Members of Council, so that out

Nominations for cadetship to be made by Secretary of State and Members of Council

of seventeen nominations the Secretary of State shall have two and each Member of Council shall have one :

But no persons so nominated shall be recommended unless the nomination be approved of by the Secretary of State in Council.

37. Save as hereinbefore provided, all powers of making regulations in relation to appointments and admissions

Regulations as to appointments and admissions to service

to service and other matters connected therewith, and of altering or revoking such regulations, which, if this Act had not been passed, might

have been exercised by the Court of Directors or Commissioners for the Affairs of India, may be exercised by the Secretary of State in Council ;

And all regulations in force at the time of the commencement of this Act in relation to the matters aforesaid shall remain in force, subject nevertheless to alteration or revocation by the Secretary of State in Council as aforesaid.

38. Any writing under the Royal Sign Manual, renewing or dismissing any person holding any office, employment, or commission, civil or military, in

Removal of officer by Her Majesty to be communicated to Secretary of State in Council

India, of which, if this Act had not been passed, a copy would have been required to be transmitted or delivered within eight days after being

signed by Her Majesty to the chairman or deputy chairman of the

1 But see further 22 and 23 Vict., C. 41.

admitting all persons being natural born subjects of Her Majesty (and of such age and qualification as may be prescribed in this behalf) who may be desirous of becoming candidates for appointment to the Civil Service of India to be examined as candidates accordingly, and for prescribing the branches of knowledge in which such candidates shall be examined, and generally for regulating and conducting such examinations, under the superintendence of the said last-mentioned Commissioners or of the person for the time being entrusted with the carrying out of such regulations as may be, from time to time, established by Her Majesty for examination, certificate, or other test of fitness in relation to appointments to junior situations in the Civil Service of the Crown :

And the candidates who may be certified by the said Commissioners or other persons as aforesaid, to be entitled under such regulations shall be recommended for appointment according to the order of their proficiency as shown by such examinations ;

And such persons only as shall have been so certified as aforesaid shall be appointed or admitted to the Civil Service of India by the Secretary of State in Council :

Provided always, that all regulations to be made by the said Secretary of State in Council under this Act shall be laid before Parliament within fourteen days after the making thereof, if Parliament be sitting, and if Parliament be not sitting then, within fourteen days after the next meeting thereof.

Regulations made by Secretary of State to be laid before Parliament

33. All appointments to cadetships, naval and military, and all admissions to service not herein otherwise provided for, shall be vested in Her Majesty ;

Other appointments and admissions to service vested in Her Majesty

And the names of persons to be from time to time recommended for such cadetships and service shall be submitted to Her Majesty by the Secretary of State.

34. * * * Regulations shall be made for admitting any persons being natural-born subjects of Her Majesty (and of such age and qualifications as may be prescribed in this behalf) who may be desirous of becoming candidates for cadetships in the engineers and in the artillery, to be examined as candidates accordingly, and for prescribing the branches of knowledge in which such candidates shall

Regulations to be made for admitting persons to be examined for cadetships in Engineers and Artillery

be examined, and generally for regulating and conducting such examinations.

35. Not less than one-tenth of the whole number of persons to be recommended in any year for military cadetships (other than cadetships in the engineers and artillery) shall be selected according to such regulations as the Secretary of State in Council may from time to time make in this behalf from among the sons of persons who have served in India in the military or civil services of Her Majesty or of the East India Company ¹.

36. Except as aforesaid, all persons to be recommended for military cadetships shall be nominated by the Secretary of State and Members of Council, so that out of seventeen nominations the Secretary of State shall have two and each Member of Council shall have one :

But no persons so nominated shall be recommended unless the nomination be approved of by the Secretary of State in Council.

37. Save as hereinbefore provided, all powers of making regulations in relation to appointments and admissions to service and other matters connected therewith, and of altering or revoking such regulations, which, if this Act had not been passed, might have been exercised by the Court of Directors or Commissioners for the Affairs of India, may be exercised by the Secretary of State in Council ;

And all regulations in force at the time of the commencement of this Act in relation to the matters aforesaid shall remain in force, subject nevertheless to alteration or revocation by the Secretary of State in Council as aforesaid.

38. Any writing under the Royal Sign Manual, renewing or dismissing any person holding any office, employment, or commission, civil or military, in India, of which, if this Act had not been passed, a copy would have been required to be transmitted or delivered within eight days after being signed by Her Majesty to the chairman or deputy chairman of the

¹ But see further 22 and 23 Vict., C. 41.

Court of Directors shall, in lieu thereof, be communicated within the time aforesaid to the Secretary of State in Council.

TRANSFER OF PROPERTY

39. All lands and hereditaments, monies, stores, goods, chattel, and other real and personal estate of the said Company, subject to the debts and liabilities affecting the same respectively, and the benefit of all contracts, covenants and engagements, and all rights to fines, penalties, and forfeitures, and all other emoluments, which the said Company shall be seized or possessed of, or entitled to, at the time of the commencement of this Act, except the capital stock of the said Company and the dividend thereon, shall become vested in Her Majesty, to be applied and disposed of, subject to the provisions of this Act, for the purposes of the Government of India.

Real and personal property of the Company to vest in Her Majesty for the purposes of the Government of India

40. The Secretary of State in Council, with the concurrence of a majority of votes at a meeting, shall have full power to sell and dispose of all real and personal estate whatsoever for the time being vested in Her Majesty under this Act, as may be thought fit, or to raise money on any such real estate by way of mortgage, and make the proper assurances for that purpose, and to purchase and acquire any land or hereditaments or any interests therein, stores, goods, chattels and other property, and to enter into any contracts whatsoever, as may be thought fit for the purposes of this Act;

Powers to sell and purchase, and to enter into contracts, vested in Secretary of State in Council, &c.

And all property so acquired shall vest in Her Majesty for the service of the Government of India : and any conveyance or assurance of or concerning any real estate to be made by the authority of the Secretary of State in Council may be made under the hands and seal of three Members of the Council.

REVENUES

41. The expenditure of the revenues of India, both in India and elsewhere, shall be subject to the control of the Secretary of State in Council;

Expenditure of revenues of India subject to control of Secretary of State in Council

And no grant or appropriation of any part of such revenues, or of any other property coming into the possession of the Secretary of

State in Council by virtue of this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council.

42. * * * * all the bond, debenture and other debt of the said

Existing and future debts and liabilities of the company and expenses to be charged on revenues of India

Company in Great Britain, and all the territorial debt and all other debts of the said Company, and all sums of money, costs, charges and expenses, which if this Act had not been passed would after the time appointed for the commencement thereof have been payable by the

said Company out of the revenues of India, in respect of any treaties, covenants, contracts, grants, or liabilities then existing, and all expenses, debts and liabilities which after the commencement of this Act shall be lawfully contracted and incurred on account of the Government of India, and all payments under this Act, shall be charged and chargeable upon the revenues of India alone, as the same would have been if this Act had not been passed, and such expenses, debts and liabilities lawfully contracted and incurred by the said Company; and such revenues shall not be applied to any other purpose whatsoever;

And all other monies vested in or arising or accruing from any property or rights vested in Her Majesty under this Act, or to be received or disposed of by the Council under this Act, shall be applied to such revenues * * * *

43. Such part of the revenues of India as shall be from time to time remitted to Great Britain, and all monies

Revenues remitted to Great Britain and monies arising in Great Britain, to be paid to Secretary of State in Council, &c.

the said Company in their treasury or under the care of their cashier, and all other monies received in Great Britain of the said Company, which would have been received by them in Great Britain if this Act had not been passed, and

monies arising or accruing in Great Britain from any property or rights vested in Her Majesty by this Act, or from the sale or disposal thereof, shall be paid to the Secretary of State in Council, to be applied for the purposes of this Act;

And all such monies, except as hereinafter otherwise provided, shall be paid into the Bank of England, to the credit of an account to be opened by the Governor and Company of the Bank of England, and intituled "The Account of the Secretary of State in Council of the

APPENDIX

f Directors shall, in lieu thereof, be communicated within the
foresaid to the Secretary of State in Council.

TRANSFER OF PROPERTY

All lands and hereditaments, monies, stores, goods, chattel
and other real and personal estate of the said
Company, subject to the debts and liabilities
affecting the same respectively, and the benefit
of all contracts, covenants and engagements, and
all rights to fines, penalties, and forfeitures, and
all other emoluments, which the said Company
seized or possessed of, or entitled to, at the time of the com-
ment of this Act, except the capital stock of the said Company
dividend thereon, shall become vested in Her Majesty, to be
and disposed of, subject to the provisions of this Act, for the
of the Government of India.

The Secretary of State in Council, with the concurrence of a
majority of votes at a meeting, shall have full
power to sell and dispose of all real and personal
estate whatsoever for the time being vested in
Her Majesty under this Act, as may be thought
fit, or to raise money on any such real estate by
way of mortgage, and make the proper assurances
thereof, and to purchase and acquire any land or hereditaments
interests therein, stores, goods, chattels and other property, and to
make any contracts whatsoever, as may be thought fit for the
purpose of this Act;

All property so acquired shall vest in Her Majesty for the
Government of India : and any conveyance or assurance
concerning any real estate to be made by the authority of the
Secretary of State in Council may be made under the hands and seal
of the members of the Council.

REVENUES

The expenditure of the revenues of India, both in India and
elsewhere, shall be subject to the control of the
Secretary of State in Council;

And no grant or appropriation of any part
of such revenues, or of any other property
coming into the possession of the Secretary of

Court of Directors shall, in lieu thereof, be communicated within the time aforesaid to the Secretary of State in Council.

TRANSFER OF PROPERTY

39. All lands and hereditaments, monies, stores, goods, chattels and other real and personal estate of the said Company, subject to the debts and liabilities affecting the same respectively, and the benefit of all contracts, covenants and engagements, and all rights to fines, penalties, and forfeitures, and all other emoluments, which the said Company shall be seized or possessed of, or entitled to, at the time of the commencement of this Act, except the capital stock of the said Company and the dividend thereon, shall become vested in Her Majesty, to be applied and disposed of, subject to the provisions of this Act, for the purposes of the Government of India.

Real and personal property of the Company to vest in Her Majesty for the purposes of the Government of India

40. The Secretary of State in Council, with the concurrence of a majority of votes at a meeting, shall have full power to sell and dispose of all real and personal estate whatsoever for the time being vested in Her Majesty under this Act, as may be thought fit, or to raise money on any such real estate by way of mortgage, and make the proper assurances for that purpose, and to purchase and acquire any land or hereditaments or any interests therein, stores, goods, chattels and other property, and to enter into any contracts whatsoever, as may be thought fit for the purposes of this Act;

Powers to sell and purchase, and to enter into contracts, vested in Secretary of State in Council, &c.

And all property so acquired shall vest in Her Majesty for the service of the Government of India : and any conveyance or assurance of or concerning any real estate to be made by the authority of the Secretary of State in Council may be made under the hands and seal of three Members of the Council.

REVENUES

41. The expenditure of the revenues of India, both in India and elsewhere, shall be subject to the control of the Secretary of State in Council;

Expenditure of revenues of India subject to control of Secretary of State in Council

And no grant or appropriation of any part of such revenues, or of any other property coming into the possession of the Secretary of

State in Council by virtue of this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council.

42. * * * * all the bond, debenture and other debt of the said Company in Great Britain, and all the territorial debt and all other debts of the said Company, and all sums of money, costs, charges and expenses, which if this Act had not been passed would after the time appointed for the commencement thereof have been payable by the said Company out of the revenues of India, in respect or by reason of any treaties, covenants, contracts, grants, or liabilities then existing and all expenses, debts and liabilities which after the commencement of this Act shall be lawfully contracted and incurred on account of the Government of India, and all payments under this Act, shall be charged and chargeable upon the revenues of India alone, as the same would have been if this Act had not been passed, and such expenses, debts and liabilities lawfully contracted and incurred by the said Company ; and such revenues shall not be applied to any other purpose whatsoever ;

And all other monies vested in or arising or accruing from property or rights vested in Her Majesty under this Act, or to be received or disposed of by the Council under this Act, shall be applied in aid of such revenues * * * *

43. Such part of the revenues of India as shall be from time to time remitted to Great Britain, and all monies of the said Company in their treasury or under the care of their cashier, and all other monies in Great Britain of the said Company, or which would have been received by them in Great Britain if this Act had not been passed, and all monies arising or accruing in Great Britain from any property or rights vested in Her Majesty by this Act, or from the sale or disposition thereof, shall be paid to the Secretary of State in Council, to be applied for the purposes of this Act ;

And all such monies, except as hereinafter otherwise provided, shall be paid into the Bank of England, to the credit of an account to be opened by the Governor and Company of the Bank of England, to be intituled " The Account of the Secretary of State in Council of India " ;

And all monies to be placed to the credit of this Act shall be paid out upon drafts or orders of Members of Council and countersigned by the one of his Under Secretaries ; and such accounts shall be kept in a separate account :

Provided always, that the Secretary of State shall cause to be kept from time to time, under the care of the Secretary of State, an account to be kept at the Bank of England, such as they may deem necessary for the payments now made under the care of the cashier of the said Company.

44. [Rep. 41 and 42 Vict., C. 79 (S. L. R.).]

45. There shall be raised in the books of the

Company of the Bank of England

Stock accounts to be opened at the Bank

may be necessary in respect of the stocks of Government annuities and other accounts respectively shall

stock account of the Secretary of State in Council and every such account shall be a public account.

46. [Rep. 41 and 42 Vict., C. 79 (S. L. R.).]

47. The Secretary of State in Council, by order of Council, shall be executed by three Members

48. All Exchequer Bills, Exchequer bonds, or other Government Securities, of whatsoever kind, not hereinbefore

Provision as to
Exchequer bills,
bonds, and other
securities

referred to, which shall be held by the Governor and Company of the Bank of England in trust for or on account of the East India Company at the

time of the commencement of this Act shall thenceforward be held by the said Governor and Company in trust for and on account of the Secretary of State in Council ;

And all such securities as aforesaid, and all such securities as may thereafter be lodged with the said Governor and Company by or on behalf of the Secretary of State in Council, shall and may be disposed of and the proceeds thereof applied as may be authorized by order in writing signed by three members of Council, and countersigned by the Secretary of State or one of his Under Secretaries, and directed to the said chief Cashier and Chief accountant.

49. All powers of issuing bonds, debentures and other securities for money in Great Britain which, if this Act

Powers of borrow-
ing transferred to
Secretary of State
in Council, &c.

had not been passed might have been exercised by the said Company, or the Court of Directors under the direction and control of the Commission-

ers for the affairs of India, or otherwise, shall and may be exercised by the Secretary of State in Council, with the concurrence of a majority of votes at a meeting ;

And such securities as might have been issued under the seal of the said Company shall be issued under the hands of three members of the Council, and countersigned by the Secretary of State or one of his Under Secretaries.

50. [Rep. 55 and 56 Vict., C. 19 (S. L. R.)]

51. The regulations and practice now acted on by the Court of

Present system
of issuing warrants
to be continued

Directors on the issue of warrants or authorities for the payment of money shall be maintained and acted on by the Secretary of State in

Council of India under this Act until the same be altered by the authority of Her Majesty in Council :

Provided * * * that warrants or authorities which have heretofore been signed by the two Directors of the East India Company shall, after the commencement of this Act, be signed by three members of the Council of India.

52. It shall be lawful for Her Majesty, by warrant under her Royal Sign Manual, countersigned by the Chancellor of the Exchequer, to appoint from time to time a fit person to be Auditor of the Accounts of the Secretary of State in Council, and to authorize such auditor to appoint and remove from time to time such assistants as may be specified in such warrant, and every such auditor shall hold office during good behaviour ;

And there shall be paid to such auditor and assistants out of the revenues of India such respective salaries as Her Majesty, by warrant as aforesaid countersigned as aforesaid, may direct ;

And such Auditor shall examine and audit the accounts of the receipt, expenditure, and disposal in Great Britain of all monies, shares and property applicable for the purposes of this Act ; and the Secretary of State in Council shall, by the officers and servants of the establishment produce and lay before such auditor from time to time all such accounts, accompanied by proper vouchers for the support of the same, and shall submit to his inspection all books, papers, and writings having relation thereto;

And such auditor shall have power to examine all such officers and servants in Great Britain of the establishment as he may see fit in relation to such accounts, and the receipt, expenditure, or disposal of such monies, shares, and property, and for that purpose, by writing under his hand, to summon before him any such officer or servant;

And such auditor shall report from time to time to the Secretary of State in Council his approval or disapproval of such accounts, with such remarks and observations in relation thereto as he may think fit, specially noting any case if there shall be, in which it shall appear to him that any money arising out of the revenues of India has been appropriated to other purposes than those of the Government of India to which alone they are declared to be applicable ; and shall specify in detail in his reports all sums of money, shares and property which ought to be accounted for, and are not brought into account, or have not been appropriated, in conformity with the provisions of this Act, or have been expended or disposed of without due authority, and shall also specify any defects, inaccuracies, or irregularities, which may appear in such accounts, or in the authorities, vouchers, or documents having relation thereto;

And all such reports shall be laid before both Houses of Parliament by such auditor, together with the accounts of the year to which the same may relate.

53. The Secretary of State in Council shall, within the first fourteen days during which Parliament may be sitting, next after the first day of May in every year, lay before both Houses of Parliament an account for the financial year preceding the last completed of the annual produce of the revenues of India, distinguishing the same under the respective heads thereof, at each of the several Presidencies or Governments, and of all the annual receipts and disbursements at home and abroad on account of the Government of India, distinguishing the same under the respective heads thereof, together with the latest estimate of the same for the last financial year, and also the amount of the debts chargeable on the revenues of India, with the rates of interest they respectively carry, and the annual amount of such interest, the state of the effects and credits at each Presidency or Government, and in England or elsewhere applicable to the purposes of the Government of India, according to the latest advices which have been received thereon, and also a list of the establishment of the Secretary of State in Council, and the salaries and allowances payable in respect thereof ;

And if any new or increased salaries or pensions of fifty pounds a year or upwards have been granted or created within a year, the particulars thereof shall be specially stated and explained at the foot of the account of such year ;

And such account shall be accompanied by a statement prepared from detailed reports from each Presidency and district in India in such form as shall best exhibit the moral and material progress and condition of India in each such Presidency.

54. When any order is sent to India directing the actual commencement of hostilities by Her Majesty's forces in India, the fact of such order having been sent shall be communicated to both Houses of Parliament within three months after the sending of such order, if Parliament be sitting, unless such order shall have been in the meantime revoked or suspended, and, if Parliament not sitting at the end of such

three months, then within one month after the next meeting of Parliament.

55. Except for preventing or repelling actual invasion of Her Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India shall not, without the consent of both Houses of Parliament, be applicable to defray the expenses of any military operation carried on beyond the external frontiers of such possessions by Her Majesty's forces charged upon such revenues.

Except for repelling invasion, the revenues of India not applicable for any military operation beyond the frontiers

EXISTING ESTABLISHMENTS

56. The Military and Naval Forces of the East India Company shall be deemed to be the Indian Military and Naval Forces of Her Majesty, and shall be under the same obligations to serve Her Majesty as they would have been under, to serve the said Company, and shall be liable to serve within the same territorial limits only, for the same terms only, and be entitled to the like pay, pensions, allowances, and privileges, and the like advantages as regards promotion and otherwise, as if they had continued in the service of the said Company ; such forces, and all persons hereafter enlisting in or entering the same, shall continue and be subject to all Acts of Parliament, laws of the Governor-General of India in Council, and articles of war, and all other laws, regulations and provisions relating to the East India Company's Military and Naval Forces respectively as if Her Majesty's Indian Military and Naval forces respectively had throughout such Acts, laws, articles, regulations, and provisions been mentioned or referred to, instead of such forces of the said Company.

And the pay and expenses of and incident to Her Majesty's Indian Military and Naval Forces shall be defrayed out of the revenues of India.

57. Provided that it shall be lawful for Her Majesty from time to time by order in Council to alter or regulate the terms and conditions of service under which persons hereafter entering Her Majesty's Indian Forces shall be commissioned, enlisted, or entered to serve ;

Provision for persons hereafter entering Her Majesty's Indian Forces

And the forms of attestation and of the oath or declaration to be used and taken or made respectively on attesting persons to serve in Her Majesty's Indian Forces shall be such as Her Majesty with regard to the European Forces, and the Governor-General of India in Council with regard to the Naval Forces, shall from time to time direct :

Provided that every such Order in Council shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament sitting and, if Parliament be not sitting, then within fourteen days after the next meeting thereof.

Officers, etc., in employ of the company at the commencement of this Act to be deemed to hold offices under Her Majesty

58. All persons who, at the time of the commencement of this Act, shall hold any offices, employments or commissions whatever under the said Company in India shall thenceforth be deemed to hold such offices, employments and commissions under Her Majesty as

if they had been appointed under this Act and shall be paid out of the revenues of India ;

And the transfer of any person to the service of Her Majesty shall be deemed to be a continuance of his previous service, and shall not prejudice any claims to pension or any claims on the various annuity funds of the several Presidencies in India, which he might have had if this Act had not been passed.

59. All orders, regulations, and directions lawfully given or made before the commencement of this Act by the Court of Directors or by the Commissioners for the Affairs of India shall remain in force ; but the same shall, from and after the commencement of this Act, be deemed to be the orders, regulations, and directions under

All orders of the Court of Directors or Board of Control given before commencement of this Act, to remain in force

this Act, and take effect and be subject to alteration or revocation accordingly.

60 to 62 [Rep. 55 and 56 Vict., C. 19 (S. L. R.)]

63. In case the person who shall be entitled under any provisions for appointment to succeed to the office of Governor-General of India upon a vacancy therein, or who shall be appointed absolutely to assume the office, shall be in India (upon or after the happening of the vacancy, or upon or after the

Governor-General may exercise his powers before he takes his seat in Council, &c.

receipt of such absolute appointment, as the case may require, but shall be absent from Fort William in Bengal, or from the place where the Council of the Governor-General of India may then be, and it shall appear to him necessary to exercise the powers of Governor-General before he shall have taken his seat in Council, it shall be lawful for him to make known by proclamation his appointment, and his intention to assume the said office of Governor-General ;

And after such proclamation, and thenceforth until he shall repair to Fort William or the place where the Council may assemble, it shall be lawful for him to exercise alone, all or any of the powers which might be exercised by the Governor-General in Council, except the power of making laws and regulations ;

And all acts done in the exercise of the said powers, except as aforesaid, shall be of the same force and effect as if they had been done by the Governor-General in Council ;

Provided that all acts done in the said Council after the date of such proclamation but before the communication thereof to such Council, shall be valid, subject nevertheless to revocation or alteration by the person who shall have so assumed the said office of Governor-General ;

And when the office of Governor-General is assumed under the foregoing provision, if there be at any time before the Governor-General takes his seat in Council, no Vice-President of the Council authorised to preside at meetings for making laws and regulations (as provided by section 22 of the Government of India Act, 1853), the senior ordinary member of Council therefor sent shall preside therein, with the same powers as if a Vice-President had been appointed and were absent.

CONTINUANCE OF EXISTING ENACTMENTS

64. All Acts and provisions of law in force or otherwise concerning India shall, subject to the provisions of this Act, continue in force, and be construed as referring to the Secretary of State in Council in the place of the said Company and the Court of Directors and Court of Proprietors thereof ;

And all enactments applicable to the officers and servants of the said Company in India, and to appointments to office or admissions to

1. S. 12, and 16 and 17 Vict, c. 95 was repealed by 24 and 25 Vict. c., 67, s. 2, see s. 15 of that Act

service by the said Court of Directors, shall, subject to the provisions of this Act, remain applicable to the officers and servants continued and to the officers and servants appointed or employed in India and to appointments to office and admissions to service under the authority of this Act.

ACTION AND CONTRACT

65. The Secretary of State in Council shall and may sue and be sued as well in India as in England by the name of the Secretary of State in Council as a body corporate ;

And all persons and bodies politic shall and may have and take the same suits, remedies and proceedings, legal and equitable, against the Secretary of State in Council of India as they could have done against the said Company;

And the property and effects hereby vested in Her Majesty for the purposes of the Government of India, or acquired for the said purposes, shall be subject and liable to the same judgments and executions as they would, while vested in the said Company, have been liable to in respect of debts and liabilities lawfully contracted and incurred by the said company.¹

66. [Rep. 41 and 42 Vict., C. 79 (S. L. R.).]

67. All treaties made by the said Company shall be binding on Her Majesty ; and all contracts, covenants, liabilities and engagements of the said Company made, incurred or entered into before the commencement of this Act, may be enforced by and against the Secretary of State in Council in like manner and in the same Courts as they might have been by and against the said Company if this Act had not been passed.

68. Neither the Secretary of State nor any member of the Council shall be personally liable in respect of any such contract, covenant, or engagement of the said Company as aforesaid, or in respect of any contract entered into under the authority of this Act, or other liability of the said Secretary of State or Secretary

¹ See *P. & O. S. N. Co. v. Secretary of State for India*, 4 Bom. H. C. Rep. Appendix, pp. 45 per Peacock, C. J.

of State in Council in their official capacity ; but all such liabilities, and all costs and damages in respect thereof, shall be satisfied and paid out of the revenues of India.

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71. * * * * the said Company shall not, after the passing of this Act, be liable in respect of any claim, demand, or liability which has arisen or may hereafter arise out of any treaty, covenant, contract, grant, engagement, or fiduciary obligation made, incurred or entered into by the said Company before the passing of this Act, whether the said Company would, but for this Act, have been bound to satisfy such claim, demand, or liability out of the revenues of India, or in any other manner whatsoever.

Company not to be liable in respect of any claim arising out of any covenant made before the passing of this Act

72 & 73 [Rep. 41 & 42 Vict., C. 79 (S. L. R.).]

74 [Rep. 55 & 56 Vict., C. 19 (S. L. R.)]

75 [Rep. 41 & 42 Vict., C. 79 (S. L. R.)]

IV

THE INDIAN COUNCILS' ACT, 1861

[1ST AUGUST 1861]

AN ACT TO MAKE BETTER PROVISION FOR THE CONSTITUTION OF THE COUNCIL OF THE GOVERNOR-GENERAL OF INDIA, AND FOR THE LOCAL GOVERNMENT OF THE SEVERAL PRESIDENCIES AND PROVINCES OF INDIA, AND FOR THE TEMPORARY GOVERNMENT OF INDIA IN THE EVENT OF A VACANCY IN THE OFFICE OF GOVERNOR-GENERAL.

Whereas it is expedient that the provisions of former Acts of Parliament respecting the constitution and functions of the Council of the Governor-General of India should be consolidated and in certain respects amended, and that power should be given to the Governors in Council of the Presidencies of Fort Saint George and Bombay to make laws and regulations for the Government of the said Presidencies ; and that provision should be made for constituting the like authority in other parts of Her Majesty's Indian dominions : Be it therefore declared and enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as “ The Indian Councils Act, 1861.”

Short title

2. Sections forty, forty-three, forty-four, fifty, sixty-six, seventy, and so much of sections sixty-one and sixty-four as relates to vacancies in the office of ordinary member of the Council of India, of the Act of the third and fourth years of King William the Fourth, chapter eighty-five, for effecting an arrangement with the East India Company, and for the better Government of Her Majesty's Indian territories, till the thirtieth day of April, one thousand eight hundred and fifty-four, sections twenty-two, twenty-three, twenty-four and twenty-six of the Act of the sixteenth and seventeenth years of Her Majesty, chapter ninety-five, “ to provide for the Government of India ” and the Act of the twenty-third and twenty fourth years of Her Majesty, chapter eight-seven, “ to remove doubts as to the authority of the senior member of the Council of the Governor-General of India in the absence of the president,” are hereby repealed : and all other enactments whatsoever now in force with relation to the Council of the Governor-General of India, or to the Councils of the Governors of the respective Presidencies of Fort Saint George and Bombay, shall, save so far as the same are altered by or are repugnant to this Act, continue in force, and be applicable to the Council of the Governor-General of India and the Councils of the respective Presidencies under this Act.

3. There shall be five ordinary members of the said Council of the Governor-General, three of whom shall from time to time be appointed from among such persons as shall have been, at the time of such appointment, in the service in India of the Crown, or of the Company and the Crown, for at least ten years ; and if the person so appointed shall be in the military service of the Crown, he shall not, during his continuance in office as a member of the Council, hold any military command, or be employed in actual military duties ; and the remaining two, one of whom shall be a barrister or a member of the Faculty of advocates in Scotland of not less than five years' standing, shall be appointed from time to time by Her Majesty

by warrant under Her Royal Sign Manual ; and it shall be lawful for the Secretary of State in Council to appoint the Commander-in-Chief of Her Majesty's Forces in India to be an extraordinary member of the said Council, and such extraordinary member of Council shall have rank and precedence at the Council Board next after the Governor-General.

4. The present ordinary members of the Council of the Governor-General of India shall continue to be ordinary members under and for the purposes of this Act ; and it shall be lawful for Her Majesty, on the passing of this Act, to appoint by warrant as aforesaid an ordinary member of Council, to complete the number of five hereby established ; and there shall be paid to such ordinary member, and to all other ordinary members who may be hereafter appointed, such amount of salary as may from time to time be fixed for members of the Council of the Governor-General by the Secretary of State in Council, with the concurrence of a majority of members of Council present at a meeting ; and all enactments of any Act of Parliament or law of India respecting the Council of the Governor-General of India and the members there shall be held to apply to the said Council as constituted by this Act, except so far as they are repealed by or are repugnant to any provisions of this Act.

Present members of Council to continue

Appointment of fifth member, and salaries of members, &c.

5. It shall be lawful for the Secretary of State in Council, with the concurrence of a majority of members present at a meeting, and for Her Majesty, by warrant as aforesaid, respectively, to appoint any person provisionally to succeed to the office of ordinary member of the Council of the Governor-General, when the same shall become vacant by the death or resignation of the person holding the said office, or on his departure from India with intent to return to Europe, or on any event and contingency expressed in any such provisional appointment, and such appointment again to revoke ; but no person so appointed to succeed provisionally to such office shall be entitled to any authority, salary, or emolument appertaining thereto until he shall be in the actual possession of such office.

Provisional appointments of members of Councils

6. Whenever the said Governor-General in Council shall declare that it is expedient that the said Governor-General should visit any part of India unaccompanied by his Council, it shall be lawful for the said Governor-General in Council, previously to the departure of the Governor-General, to nominate some member of the said Council to be President of the said Council, in whom, during the time of such visit, the powers of the said Governor-General in assemblies of the said Council shall be reposed, except that of assenting to or withholding his assent from, or reserving for the signification of Her Majesty's pleasure, any law or regulation, as hereinafter provided; and it shall be lawful in every such case for the said Governor-General in Council by an order for that purpose to be made, to authorize the Governor-General alone to exercise all or any of the powers which might be exercised by the said Governor-General in Council, in every case in which the said Governor-General may think it expedient, to exercise the same, except the power of making laws or regulations.

7. Whenever the Governor-General, or such President so nominated as aforesaid, shall be obliged to absent himself from any meeting of Council (other than meetings for the purpose of making laws and regulations, as hereinafter provided, owing to indisposition or any other cause whatsoever, and shall signify his intended absence to the Council, then and in every such case the senior member for the time being who shall be present at such meeting shall preside thereat, in such manner, and with such full powers and authorities during the time of such meeting, as such Governor-General or President would have had in case he had been present at such meeting, provided always, that no act of Council made at any such meeting shall be valid to any effect whatsoever unless the same shall be signed by such Governor-General or President respectively, if such Governor-General or President shall at the time be resident at the place at which such meeting shall be assembled, and shall not be prevented by such indisposition from signing the same: Provided always, that in case such Governor-General or President, not being so prevented as aforesaid, shall decline or refuse to sign such act of Council, he, and the several members of Council who shall have signed the same, shall mutually

exchange with and communicate in writing to each other the grounds and reasons of their respective opinions, in like manner and subject to such regulations and ultimate responsibility as are by an Act of the thirty-third year of King George the Third, chapter fifty-two, sections

33 Geo 3, c. 52. ss. 47 to 51 forty-seven, forty-eight, forty-nine, fifty, fifty-one, provided and described in cases, where such Governor-General shall, when present, dissent from any measure proposed or agitated in the Council.

8. It shall be lawful for the Governor-General from time to time to make rules and orders for the more convenient transaction of business in the said Council ; and any order made or act done in accordance with such rules and orders (except as hereafter provided respecting laws and regulations) shall be deemed to be the order or act of the Governor-General in Council.

Power of Governor-General to make rules for conduct of business

9. The said Council shall from time to time assemble at such place or places as shall be appointed by the Governor-General in Council within the territories of India ; and as often as the said Council shall assemble within either of the Presidencies of Fort Saint George or Bombay, the Governor of such Presidency shall act as an extraordinary member of Council ; and as often as the said Council shall assemble with any other division, province, or territory having a Lieutenant-Governor, such Lieutenant-Governor shall act as an additional councillor at meetings of the Council, for the purpose of making laws and regulations only, in manner hereinafter provided.

Council, where to assemble

10. For the better exercise of the power of making laws and regulations vested in the Governor-General in Council, the Governor-General shall nominate, in addition to the ordinary and extraordinary members above mentioned, and to such Lieutenant-Governor in the case aforesaid, such persons, not less than six or more than twelve in number, as to him may seem expedient, to be members of Council for the purpose of making laws and regulations only ; and such persons shall not be entitled to sit or vote at any meeting of Council, except at meetings held for such purpose ; Provided, that not less than one-half of the persons so nominated shall be non-official persons, that is persons who, at the date of such nomination shall not be in the civil or military service of the Crown in

Additional members to be summoned for the purpose of making laws and regulations

India ; and that the seat in Council of any non-official member accepting office under the Crown in India shall be vacated on such acceptance.

11. Every additional member of Council so nominated shall be

Such member to
be appointed for two
years

summoned to all meetings held for the purpose
of making laws and regulations for the term of
two years from the date of such nomination.

12. It shall be lawful for any such additional member of Council

Resignation of ad-
ditional members

to resign his office to the Governor-General and
on acceptance of such resignation by the Gov-
ernor-General such office shall become vacant.

13. On the event of a vacancy occurring by the death, acceptance

Power to fill up
vacancy in number
of additional mem-
bers

of office, or resignation accepted in manner
aforesaid, of any such additional member of
Council, it shall be lawful for the Governor-
General to nominate a person as additional
member of Council in his place, who shall exercise the same functions
until the termination of the term for which the additional member so
dying, accepting office or resigning, was nominated: Provided always,
that it shall not be lawful for him by such nomination to diminish the
proportion of non-directed to be nominated.

14. No law or regulation made by the Governor-General in Coun-
cil in accordance with the provisions of this Act

No law to be in-
valid by reason of
number of non-
official members
being incomplete

shall be deemed invalid by reason only that the
proportion of non-official additional members
hereby provided was not complete at the date of
its introduction to the Council or its enactment.

15. In the absence of the Governor-General and of the President.

Senior ordinary
member of Council
to preside at meet-
ings for making
laws and regulations
in absence of Gover-
nor-General, &c.
Quorum

nominated as aforesaid, the senior ordinary
member of the Council present shall preside at
meetings of the Council for making laws and
regulations ; and the power of making laws
and regulations vested in the Governor-General
in Council shall be exercised only at meetings

of the said Council at which such Governor-General or President, or
some ordinary member of Council and six or more members of the said
Council (including under the term members of the Council such
additional members as aforesaid), shall be present ; and in every
case of difference of opinion at meetings of the said Council for

making laws and regulations, where there shall be an equality of voices, the Governor-General, or in his absence the President, and in the absence of the Governor-General such senior ordinary member of Council there presiding, shall have two votes or the casting vote.

16. The Governor-General in Council shall, as soon as conveniently may be, appoint a place and time for the first meeting of the said Council of the Governor-General for making laws and regulations under this Act, and summon thereto as well the additional Councillors nominated by and under this Act as the other members of such Council ; and until such first meeting the powers now vested in the said Governor-General of India in Council of making laws and regulations shall and may be exercised in like manner and by the same member, as before the passing of this Act.

17. It shall be lawful for the Governor-General in Council from time to time to appoint all other times and places of meeting of the Council for the purpose of making laws and regulations under the provisions of this Act, and to adjourn, or from time to time to authorize such President, or senior Ordinary Member of Council in his absence, to adjourn any meeting for the purpose or making laws and regulations from time to time and from place to place.

18. It shall be lawful for the Governor-General in Council to make rules for the conduct of business at meetings of the Council for the purpose of making laws and regulations under the provisions of this Act, prior to the first of such meetings ; but such rules may be subsequently amended at meetings for the purpose of making laws or regulations subject to the assent of the Governor-General and such rules shall prescribe the mode of promulgation and authentication of such laws and regulations. Provided always, that it shall be lawful for the Secretary of State in Council to disallow any such rule, and to render it of no effect.

19. No business shall be transacted at any meeting for the purpose of making laws and regulations, except as last herein before provided, other than the consideration and enactment of mea-

asures introduced in the Council for the purpose of such enactment ; and it shall not be lawful for any member or additional member to make or for the Council to entertain any motion, unless such motion be for leave to introduce some measure as aforesaid into Council, or have reference to some measure actually introduced therein ; Provided always, that it shall not be lawful for any member or additional member to introduce, without the previous sanction of the Governor-General, any measure affecting,—

(i) The Public Debt or public revenues of India, or by which any charge would be imposed on such revenues :

(ii) The religion or religious rights and usages of any class of Her Majesty's subjects in India.

(iii) The discipline or maintenance of any part of Her Majesty's Military or Naval Forces :

(iv) The relations of the Government with foreign princes or states.

20. When any law or regulation has been made by the Council at a meeting for the purpose of making laws and regulations as aforesaid it shall be lawful for the Governor-General whether he shall or shall not have been present in Council at the making thereof, to declare that he assents to the same or that he withholds his assent from the same, or that he reserves the same for the signification of the pleasure of Her Majesty thereon ; and no such law or regulation shall have validity until the Governor-General shall have declared his assent to the same, or until in the case of law or regulation so reserved as aforesaid Her Majesty shall have signified her assent to the same to the Governor-General, through the Secretary of State for India in Council, and such assent shall have been duly proclaimed by the said Governor-General.

Power of the Crown to disallow laws and regulations made at such meetings

21. Whenever any such law or regulation has been assented to by the Governor-General, he shall transmit to the Secretary of State for India an authentic copy thereof; and it shall be lawful for Her Majesty to signify, through the Secretary of State for India in Council, her disallowance of such law ; and such disallowance shall make void and annul such law from or after the day on which the Governor-General shall make known, by

proclamation or by signification to his Council, that he has received the notification of such disallowance by Her Majesty.

22. The Governor-General in Council shall have power at meetings for the purpose of making laws and regulations as aforesaid, and subject to the provisions herein contained, to make laws and regulations for repealing, amending, or altering any laws or regulations whatever now in force or hereafter to be in force in the Indian territories now under the dominion of Her Majesty, and to make laws and regulations for all persons, whether British or Native, foreigners or others, and for all courts of justice whatever, and for all places and things whatever within the said territories, and for all servants of the Government of India within the dominions of princes and states in alliance with Her Majesty*; and the laws and regulations so to be made by the Governor-General in Council shall control and supersede any laws and regulations in any wise repugnant thereto which shall have been made prior thereto by the Governors of the Presidencies of Fort St. George and Bombay respectively in Council, or the Governor or Lieutenant-Governor in Council of any presidency or other territory for which a Council may be appointed, with power to make laws and regulations, under and by virtue of this Act :

Provided always, that the said Governor-General in Council shall not have the power of making any laws or regulations which shall repeal or in any way affect any of the provisions of this Act :

Or any of the provisions of the Acts of the third and fourth years of King William the Fourth, chapter eighty-five, and of the sixteenth and seventeenth years of Her Majesty, chapter ninety-five, and of the seventeenth and eighteenth years of Her Majesty, chapter seventy-seven, which after the passing of this Act shall remain in force :

Or any provisions of the Act of the twenty-first and twenty-second years of Her Majesty, chapter one hundred and six, entitled, "An Act for the Better Government of India," or of the Act of the twenty-second and twenty-third years of Her Majesty, chapter forty-one, to amend the same :

* See also 28 Vict., c. 17, s. 1, & 32 & 33 Vict, c. 95, s. 1.



Or of any Act enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India :

Or of the Acts for punishing mutiny and desertion in Her Majesty's Army or in Her Majesty's Indian Forces respectively, but subject to the provision contained in the Act of the third and fourth years of King William the Fourth, chapter eighty-five, section seventy-three, respecting the Indian Articles of War:

Or any provisions of any Act* passed in this present session of Parliament, or hereafter to be passed, in anywise affecting Her Majesty's Indian territories, or the inhabitants thereof :

Or which may affect the authority of Parliament, or the constitution and rights of the East India Company, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or the sovereignty or dominion of the Crown over any part of the said territories.

23. Notwithstanding anything in this Act contained, it shall be

lawful for the Governor-General, in cases of emergency, to make and promulgate from time to time ordinances for the peace and good government of the said territories or of any part thereof, subject however to the restrictions

Governor-General may make ordinances having force of law in case of urgent necessity

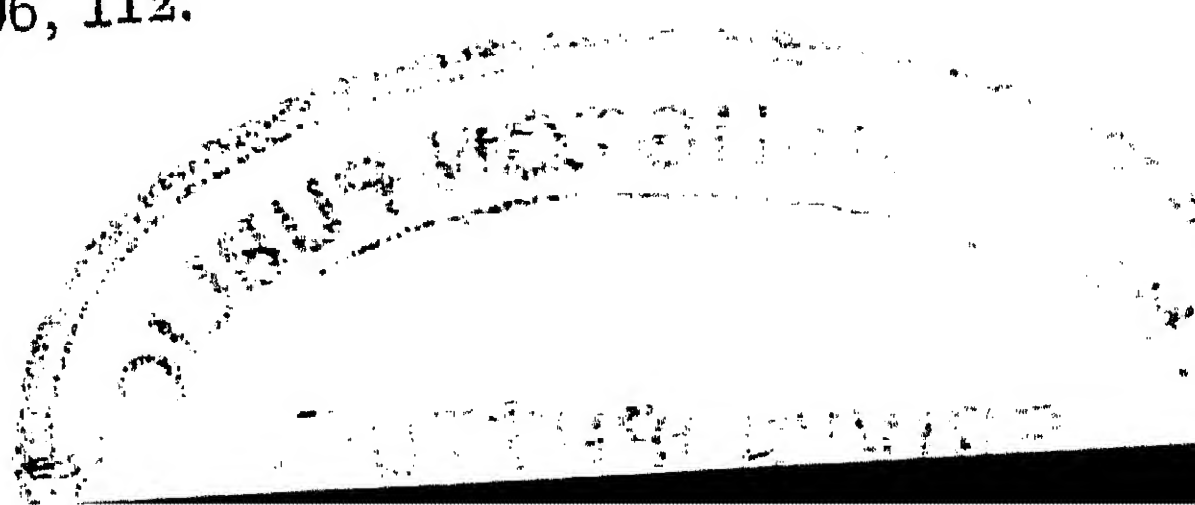
contained in the last preceding section ; and every such ordinance shall have like force of law with a law or regulation made by the Governor-General in Council, as by this Act provided, for the space of not more than six months from its promulgation, unless the disallowance of such ordinance by Her Majesty shall be earlier signified to the Governor-General by the Secretary of State for India in Council or unless such ordinance shall be controlled or superseded by some law or regulation made by the Governor-General in Council at a meeting for the purpose of making laws and regulations as by this Act provided.

24. No law or regulation made by the Governor-General in

No law, &c. invalid by reason of its affecting the prerogative of the Crown

Council (subject to the power of disallowance by the Crown, as hereinbefore provided), shall be deemed invalid by reason only that it affects the prerogative of the Crown.

**Queen v. Meares*, 14 Beng. 106, 112.



25. Whereas doubts have been entertained whether the Governor-General of India, or the Governor-General of India in Council, had the power of making rules, laws, and regulations for the territories known from time to time as "Non-regulation Provinces," except at meetings for making laws and regulations in conformity with the provisions of the said Acts of the third and fourth years of King William the Fourth, chapter eighty-five, and of the sixteenth and seventeenth years of Her Majesty, chapter ninety-five, and whether the Governor, or Governor in Council, or Lieutenant Governor of any presidency or part of India had such power in respect of any such territories, be it enacted, that no rule, law, or regulation which prior to the passing of this Act shall have been made by the Governor-General or Governor-General in Council, or by any other of the authorities aforesaid, for and in respect of any such non-regulation province, shall be deemed invalid only by reason of the same not having been made in conformity with the provisions of the said Acts, or of any other Act of Parliament respecting the constitution and powers of the Council of India or of the Governor-General, or respecting the powers of such Governors, or Governors in Council, or Lieutenant-Governors as aforesaid.

26. It shall be lawful for the Governor-General in Council, or Governor in Council of either of the Presidencies as the case may be, to grant to an ordinary Member of Council leave of absence under medical certificate, for a period not exceeding six months; and such member, during his absence shall retain his office, and shall, on his return and resumption of his duties, receive half his salary* for the period of such absence; but if his absence shall exceed six months, his office shall be vacated.

27. If any vacancy shall happen in the office of an ordinary Member of the Council of the Governor-General of the Council of either of the Presidencies, when no person provisionally appointed to succeed thereto shall be then present on the spot, then and on every such occasion, such vacancy shall be supplied by the appointment of the Governor-General in Council, or the

See 3 & 4 Wm. IV, C. 85, Section 77.

Governor in Council as the case may be: and until a successor shall arrive the person so nominated shall execute the office to which he shall have been appointed, and shall have all the powers thereof and shall have and be entitled to the salary and other emoluments and advantages appertaining to the said office during his continuance therein, every such temporary Member of Council foregoing all salaries and allowances by him held and enjoyed at the time of his being appointed to such office; and if any ordinary Member of the Council of the Governor-General, or of the Council of either of the Presidencies, shall, by any infirmity or otherwise, be rendered incapable of acting or of attending to act as such, or if any such member shall be absent on leave, and if any person shall have been provisionally appointed as aforesaid, then the place of such member absent or unable to attend, shall be supplied by such person; and if no person provisionally appointed to succeed to the office shall be then on the spot, the Governor-General in Council, or Governor in Council, as the case may be, shall appoint some person to be a temporary Member of Council; and, until the return of the member so absent or unable to attend, the person so provisionally appointed by the Secretary of State in Council, or so appointed by the Governor-General in Council, or Governor in Council as the case may be, shall execute the office to which he shall have been appointed, and shall have all the powers thereof, and shall receive half the salary of the Member of Council whose place he supplies, and also half the salary of his office under the Government of India, or the Government of either of the Presidencies, as the case may be, if he hold any such office, the remaining half of such last named salary being at the disposal of the Government of India, or other Government as aforesaid: Provided always, that no person shall be appointed a temporary Member of the said Council who might not have been appointed as hereinbefore provided to fill the vacancy supplied by such temporary appointment.

28. It shall be lawful for the Governors of the Presidencies of Fort Saint George and Bombay, respectively, from time to time to make rules and orders for the conduct of business in their Councils, and any order made or act done in accordance with such directions, except as hereinafter

Governors of Fort Saint George and Bombay may make rules for the conduct of business in their Councils

provided respecting laws and regulations, shall be deemed to be the order or act of the Governor in Council.

29. For the better exercise of the power of making laws and regulations hereinafter vested in the Governors of the said Presidencies in Council respectively, each of the said Governors shall, in addition to the members whereof his Council now by law consists, or may consist, termed herein ordinary members, nominate to be additional members, the Advocate-General of the Presidency or officer acting in that capacity, and such other persons, not less than four nor more than eight in number, as to him may seem expedient, to be members of Council, for the purpose of making laws and regulations only ; and such members shall not be entitled to sit or vote at any meeting of Council, except at meetings held for such purpose ; provided, that no less than half of the persons so nominated shall be non-official persons, as hereinbefore described ; and that the seat in Council of any non-official member accepting office under the Crown in India shall be vacated on such acceptance.

30. Every additional member of Council so nominated shall be summoned to all meetings held for the purpose of making laws and regulations for the term of two years from the date of such nomination.

31. It shall be lawful for any such additional member of Council to resign his office to the Governor of the Presidency ; and on acceptance of such resignation by the Governor of the Presidency, such office shall become vacant.

32. On the event of a vacancy occurring by the death, acceptance of office, or resignation accepted in manner aforesaid, of any such additional Member of Council, it shall be lawful for the Governor of the Presidency to summon any person as additional Member of Council in his place, who shall exercise the same functions until the termination of the term for which the additional member so dying, accepting office, or resigning, was nominated : Provided always, it shall not be lawful for him by such nomination to

diminish the proportion of non-official members hereinbefore directed to be nominated.

33. No law or regulation made by any such Governor in Council in accordance with the provisions of this Act shall be deemed invalid by reason only that the proportion of non-official additional members hereby established was not complete at the date of its introduction to the Council or its enactment.

No law to be invalid by reason of incompleteness of number of non-official members

34. At any meeting of the Council of either of the said Presidencies from which the Governor shall be absent, the senior civil ordinary Member of Council present shall preside; and the power of making laws and regulations hereby vested in such Governor in Council shall be exercised only at meetings of such Council at which the Governor or some ordinary Member of Council, and four or more Members of Council (including under the term Members of Council such additional members as aforesaid, shall be present and in any case of difference of opinion at meetings of any such Council for making laws and regulations, where there shall be an equality of voices, the Governor, or in his absence the senior member then presiding, shall have two votes or the casting vote.

Senior civil ordinary Member of Council to preside in absence of Governor of Presidency

35. The Governor-General in Council shall, as soon as convenient may appoint the time for the first meeting of the Councils of Fort Saint George and Bombay respectively, for the purpose of making laws and regulations under this Act; and the Governors of the said Presidencies respectively shall summon to such meeting as well the additional Councillors appointed by and under this Act as the ordinary Members of the said Councils.

Governor-General to fix first meeting of councils of Presidencies for making laws and regulations, &c.

36. It shall be lawful for every such Governor to appoint all subsequent times and places of meeting of his Council for the purpose of making laws and regulations under the provisions of this Act, and to adjourn or from time to time to authorize such senior ordinary Member of Council in his

Governors of Presidencies to appoint subsequent meetings, and adjourn them

provided respecting laws and regulations, shall be deemed to be the order or act of the Governor in Council.

29. For the better exercise of the power of making laws and

regulations hereinafter vested in the Governors of the said Presidencies in Council respectively, each of the said Governors shall, in addition to the members whereof his Council now by law consists, or may consist, termed herein ordinary members, nominate to be additional members, the Advocate-General of the Presidency or officer acting in that capacity, and such other persons, not less than four nor more than eight in number, as to him may seem expedient, to be members of Council, for the purpose of making laws and regulations only ; and such members shall not be entitled to sit or vote at any meeting of Council, except at meetings held for such purpose ; provided, that no less than half of the persons so nominated shall be non-official persons, as hereinbefore described ; and that the seat in Council of any non-official member accepting office under the Crown in India shall be vacated on such acceptance.

30. Every additional member of Council so nominated shall be

Such members summoned to all meetings held for the purpose of making laws and regulations for the term of two years from the date of such nomination.

31. It shall be lawful for any such additional member of Council

Resignation of additional members to resign his office to the Governor of the Presidency ; and on acceptance of such resignation by the Governor of the Presidency, such office shall become vacant.

32. On the event of a vacancy occurring by the death, accept-

ance of office, or resignation accepted in manner aforesaid, of any such additional Member of Council, it shall be lawful for the Governor of the Presidency to summon any person as additional Member of Council in his place, who shall exercise the same functions until the termination of the term for which the additional member so dying, accepting office, or resigning, was nominated : Provided always, it shall not be lawful for him by such nomination to

diminish the proportion of non-official members hereinbefore directed to be nominated.

33. No law or regulation made by any such Governor in Council in accordance with the provisions of this Act shall be deemed invalid by reason only that the proportion of non-official additional members hereby established was not complete at the date of its introduction to the Council or its enactment.

No law to be invalid by reason of incompleteness of number of non-official members

34. At any meeting of the Council of either of the said Presidencies from which the Governor shall be absent, the senior civil ordinary Member of Council present shall preside; and the power of making laws and regulations hereby vested in such Governor in Council shall be exercised only at meetings of such Council at which the Governor or some ordinary Member of Council, and four or more Members of Council (including under the term Members of Council such additional members as aforesaid, shall be present and in any case of difference of opinion at meetings of any such Council for making laws and regulations, where there shall be an equality of voices, the Governor, or in his absence the senior member then presiding, shall have two votes or the casting vote.

Senior civil ordinary Member of Council to preside in absence of Governor of Presidency

35. The Governor-General in Council shall, as soon as convenient may appoint the time for the first meeting of the Councils of Fort Saint George and Bombay respectively, for the purpose of making laws and regulations under this Act; and the Governors of the said Presidencies respectively shall summon to such meeting as well the additional Councillors appointed by and under this Act as the ordinary Members of the said Councils.

Governor-General to fix first meeting of councils of Presidencies for making laws and regulations, &c.

36. It shall be lawful for every such Governor to appoint all subsequent times and places of meeting of his Council for the purpose of making laws and regulations under the provisions of this Act, and to adjourn or from time to time to authorize such senior ordinary Member of Council in his

Governors of Presidencies to appoint subsequent meetings, and adjourn them

absence to adjourn any meeting for making laws and regulations from time to time and from place to place.

37. Previously to the first of such meetings of their Councils for the purpose of making laws and regulations under the provisions of this Act, the Governors of the said Presidencies in Council respectively shall make rules for the conduct of business at such meetings, subject to the sanction of the Governor-General in Council ; but such rules may be subsequently amended at meetings for the purpose of making laws and regulations, subject to the assent of the Governor : Provided always, that it shall be lawful for the Governor-General in Council to disallow any such rule, and render the same of no effect.

38. No business shall be transacted at any meeting of the Council of either of the said Presidencies for the purpose of making laws and regulations (except as last hereinbefore provided, other than the consideration and enactment of measures introduced into such Council for the purpose of such enactment; and it shall not be lawful for any member or additional member to make, or for the Council to entertain any motion, unless such motion shall be for leave to introduce some measure as aforesaid into Council, or have reference to some measure actually introduced thereinto : Provided always, that it shall not be lawful for any member or additional member to introduce without the previous sanction of the Governor, any measure affecting the public revenues of the Presidency, or by which any charge shall be imposed on such revenues.

39. When any law or regulation has been made by any such Council at a meeting for the purpose of making laws and regulations as aforesaid, it shall be lawful for the Governor, whether he shall or shall not have been present in Council at such meeting, to declare that he assents to, or withholds his assent from the same.

40. The Governor shall transmit forthwith an authentic copy of every law or regulation to which he shall have so declared his assent to the Governor-General ; and no such law or regulation shall have validity until the Governor-General shall have assented

thereto, and such assent shall have been signified by him to and published by the Governor: Provided always, that in every case where the Governor-General shall withhold his assent from any such law or regulation, he shall signify to the Governor in writing his reason for so withholding his assent.

41. Whenever any such law or regulation shall have been assented to by the Governor-General, he shall transmit to the Secretary of State for India an authentic copy thereof; and it shall be lawful for Her Majesty to signify, through the Secretary of

Power of the
Crown to disallow
laws and regula-
tion of Presidencies

State for India in Council, her disallowance of such law or regulation and such disallowance shall make void and annul such law or regulation from or after the day on which such Governor shall make known by proclamation, or by signification to the Council, that he has received the notification of such disallowance by Her Majesty.

42. The Governor of each of the said Presidencies in Council

Extent of power
of Governor of Pre-
sidency in Council
to make laws

shall have power, at meetings for the purpose of making laws and regulations as aforesaid, and subject to the provisions herein contained to make laws and regulations for the peace and

good government of such Presidency, and for that purpose to repeal and amend any laws and regulations made prior to the coming into operation of this Act by any authority in India, so far as they affect such Presidency: Provided always, that such Governor in Council shall not have the power of making any laws or regulations which shall in any way affect any of the provisions of this Act, or of any other Act of Parliament in force or hereafter to be in force in such Presidency.

43. It shall not be lawful for the Governor in Council of either

Governor of Pre-
sidency, except with
sanction of Gover-
nor-General, not to
make or take into
consideration laws
and regulations for
certain purposes

of the aforesaid Presidencies, except with the sanction of the Governor-General, previously communicated to him to make regulations or take into consideration any law or regulation for any of the purposes next hereinafter mentioned; that is to say,

1. Affecting the Public Debt of India, or the customs duties, or any other tax or duty now in force and imposed by the authority of the Government of India for the general purposes of such Government;

2. Regulating any of the current coin, or the issue of any bills, notes, or other paper currency :
3. Regulating the conveyance of letters by the post office or messages by the electric telegraph within the Presidency :
4. Altering in any way the Penal Code of India, as established by Act of the Governor-General in Council, No. 42 of 1860* :
5. Affecting the religion or religious rites and usages of any class of Her Majesty's subjects in India :
6. Affecting the discipline or maintenance of any part of Her Majesty's Military or Naval Forces :
7. Regulating patents or copyright :
8. Affecting the relations of the Government with foreign princes or states :

Provided always, that no law or provision of any law or regulation which shall have been made by any such Governor in Council, and assented to by the Governor-General as aforesaid shall be deemed invalid only by reason of its relating to any of the purposes comprised in the above list.

44. The Governor-General in Council, so soon as it shall appear to him expedient, shall, by proclamation, extend the provisions of this Act touching the making of laws and regulations for the peace and good government of the Presidencies of Fort St. George and Bombay to the Bengal Division of the Presidency of Fort William, and shall specify in such proclamation the period at which such provisions shall take effect, and the number of councillors whom the Lieutenant-Governor of the said division may nominate for his assistance in making laws and regulations ; and it shall be further lawful for the Governor-General in Council, from time to time and in his discretion, by similar proclamation, to extend the same provisions to the territories known as the North-Western Provinces and the Punjab respectively.

* should be "No. 45."

45. Whenever such proclamation as aforesaid shall have been issued regarding the said division or territories respectively, the Lieutenant-Governor thereof shall nominate, for his assistance in making laws and regulations, such number of councillors as shall be in such proclamation specified; provided, that not less than one-third of such councillors shall in every case be non-official persons, as hereinbefore described, and that the nomination of such councillors shall be subject to the sanction of the Governor-General; and provided further, that at any meeting of any such Council from which the Lieutenant-Governor shall be absent, the member highest in official rank among those who may hold office under the Crown shall preside; and the power of making laws and regulations shall be exercised only at meetings at which the Lieutenant-Governor, or some member holding office as aforesaid, and not less than one-half of the members of Council summoned as aforesaid, shall be present; and in any case of difference of opinion at any meetings of such Council for making laws and regulations, where there shall be an equality of voice, the Lieutenant-Governor, or such member highest in official rank as aforesaid then presiding, shall have two votes or the casting vote.

46. It shall be lawful for the Governor-General, by proclamation as aforesaid, to constitute from time to time new provinces for the purposes of this Act, to which the like provisions shall be applicable; and further to appoint from time to time a Lieutenant-Governor to any province so constituted as aforesaid, and from time to time to declare and limit the extent of the authority of such Lieutenant-Governor, in like manner as is provided by the Act of the seventeenth and eighteenth years of Her Majesty, chapter seventy-seven, respecting the Lieutenant-Governors of Bengal and the North-Western Provinces.

47. It shall be lawful for the Governor-General in Council, by such proclamation as aforesaid, to fix the limits of any presidency, division, province, or territory in India for the purpose of this Act, and further by proclamation to divide or alter from time to time the limits of any such presidency, division, province, or territory for the said purposes: Provided always, that any law or regulation

made by the Governor or Lieutenant-Governor in Council of any presidency, division, province, or territory shall continue in force in any part thereof which may be severed therefrom by any such proclamation, until superseded by law or regulation of the Governor-General in Council, or of the Governor or Lieutenant-Governor in Council of the presidency, division, province, or territory, to which such parts may become annexed.

48. It shall be lawful for every such Lieutenant-Governor in Council thus constituted to make laws for the peace and good government of his respective division, province, or territory, and, except as otherwise hereinbefore specially provided, all the provisions in this Act contained respecting the nomination of additional members for the purpose of making laws and regulations for the Presidencies of Fort Saint George and Bombay, and limiting the power of the Governors in Council of Fort Saint George and Bombay for purpose of making laws and regulations, and respecting the conduct of business in the meetings of such Councils for that purpose, and respecting the power of the Governor-General to declare or withhold his assent to laws or regulations made by the Governor in Council of Fort Saint George and Bombay, and respecting the power of Her Majesty to disallow the same, shall apply to laws or regulations to be so made by any such Lieutenant-Governor in Council.

49. Provided always, that no proclamation to be made by the Governor-General in Council under the provisions of this Act for the purpose of constituting any Council for the presidency, division, province, or territorie hereinbefore named, or any other provinces, or for altering the boundaries of any presidency, division, province, or territory, or constituting any new province for the purpose of this Act, shall have any force or validity until the sanction of Her Majesty to the same shall have been previously signified by the Secretary of State in Council to the Governor-General.

50. If any vacancy shall happen in the office of Governor-General of India when no provisional successor shall be in India to supply such vacancy, then and in every such case the Governor of the Presidency of Fort Saint George or the Governor of the Presidency of Bombay who shall have been

Powers of newly constituted Lieutenant-Governors in Council

Previous assent of the Crown necessary to give validity to proclamation

Provision for the supply of the office of Governor-General in certain circumstances

first appointed to the office of Governor by Her Majesty, shall hold and execute the said office of Governor-General of India and Governor of the Presidency of Fort William in Bengal until a successor shall arrive, or until some person in India shall be duly appointed thereto; and every such acting Governor-General shall, during the time of his continuing to act as such, have and exercise all the rights and powers of Governor-General of India, and shall be entitled to receive the emoluments and advantages appertaining to the office by him supplied, such acting Governor-General foregoing the salary and allowances appertaining to the office of Governor to which he stands appointed; and such office of Governor shall be supplied for the time during which such Governor shall be supplied for the time which such Governor shall act as Governor-General, in the manner directed in section sixty-three of the Act of the third and fourth years of King William the Fourth, chapter eighty-five.

51. If, on such vacancy occurring, it shall appear to the Governor, who by virtue of this Act shall hold and execute

If it appears to the Governor necessary to exercise powers before taking his seat in Council, he may make his appointment, &c. known by proclamation

the said office of Governor-General, necessary to exercise the powers thereof before he shall have taken his seat in Council, it shall be lawful for him to make known by proclamation his appointment and his intention to assume the said office of Governor-General; and after such proclamation, and thenceforth until he shall repair to the place

where the Council may assemble, it shall be lawful for him to exercise alone all or any of the powers which might be exercised by the Governor-General in Council, except the power of making laws and regulations; and all acts done in the exercise of the said powers, except as aforesaid, shall be of the same force and effect as if they had been done by the Governor-General in Council; provided, that all acts done in the said Council after the date of such proclamation, but before the communication thereof to such Council, shall be valid, subject nevertheless to revocation or alteration by such Governor who shall have so assumed the said office of Governor-General and from, the date of the vacancy occurring, until such Governor shall have assumed the said office of Governor-General, the provisions of section sixty-two of the Act of the third and fourth years of King William the Fourth, chapter eighty-five, shall be and the same are declared to be applicable to the case.

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52. Nothing in this Act contained shall be held to derogate from or interfere with (except as hereinbefore expressly provided) the rights vested in Her Majesty, or the powers of the Secretary of State for India in Council, in relation to the Government of Her Majesty's dominions in India, under any law in force at the date of the passing of this Act ; and all things which shall be done by Her Majesty, or by the Secretary of State as aforesaid, in relation to such Government, shall have the same force and validity as if this Act had not been passed.

53. Wherever any act or thing is by this Act required or authorized to be done by the Governor-General or by the Governors of the Presidencies of Fort Saint George and Bombay in Council, it is not required that such act or thing should be done at a meeting for making laws and regulations, unless where expressly provided.

Meaning of term
"in Council"

V

AMENDING AND REVISING ACTS

(i) THE GOVERNMENT OF INDIA ACT, 1865

(28 and 29 Vict., Ch. 17)

AN ACT TO ENLARGE THE POWER OF THE GOVERNOR-GENERAL OF INDIA IN COUNCIL AT MEETINGS FOR MAKING LAWS AND REGULATIONS AND TO AMEND THE LAW RESPECTING THE TERRITORIAL LIMITS OF THE SEVERAL PRESIDENCIES AND LIEUTENANT-GOVERNORSHIPS IN INDIA.

[9TH MAY, 1865]

[*Preamble recites 24 and 25 Vict., Ch. 67, S. 22*]

1. The Governor-General of India shall have power at meetings

Power to make laws for all British subjects in territories of allied Princes in India

for the purpose of making laws and regulations, to make laws and regulations for all British subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty whether in the service of the Government of India or otherwise.

2. The preceding section shall be read with and taken as part

Preceding section to be read as part of section 22 of recited Act

of section twenty-two of the said Act of the twenty-fourth and twenty-fifth years of Her Majesty, chapter sixty-seven.

3. [Rep. 41 and 42 Vict., Ch. 79 (S. L. R.)]

4. It shall be lawful for the Governor-General of India in Council

Power to Governor-General to appoint territorial limits of Presidencies &c. by proclamation

from time to time to declare and appoint, by proclamation, what part or parts of the Indian territories for the time being under the dominion of Her Majesty shall be or continue subject to each of the Presidencies and Lieutenant-

Governorships for the time being subsisting in such territories, and to make such distribution and arrangement or new distribution and arrangement of such territories into or among such Presidencies and Lieutenant-Governorships as to the said Governor-General in Council may seem expedient.

5. Provided always that it shall be lawful for the Secretary of State in Council to signify to the said Governor-General in Council his disallowance of any proclamation : and provided further that no such proclamation for the purpose of transferring an entire Zilla or district from one Presidency to another, or from one Lieutenant-Governorship to another, shall have any force or validity until the sanction of Her Majesty to the same shall have been previously signified by the Secretary of State in Council to the Governor-General.

Power to Secretary of State in Council to signify disallowance of such proclamation. Royal Sanction necessary to transfer of entire districts

(ii) THE GOVERNMENT OF INDIA ACT, 1869

(32 and 33 Vict., Ch. 97)

AN ACT TO AMEND IN CERTAIN RESPECTS THE ACT FOR THE BETTER GOVERNMENT OF INDIA.

[*Preamble Recites 21 and 22 Vict., Ch. 106*].

1. After the passing of this Act, all vacancies that shall take place in the said Council shall be filled up by appointment by the Secretary of State.

Vacancies in Council of India

2. Every member of the said Council who shall, after the passing of this Act, be so appointed, shall be appointed for a term of ten years, and except as hereinafter provided, shall not be re-eligible.

Term of office

3. It shall be lawful for the Secretary of State to re-appoint for a further period of five years any person whose term of office as member of Council under this Act, shall have expired, provided such re-appointment be made for special reasons of public advantage, which reasons shall be set forth in a minute signed by the said Secretary of State, and laid before both Houses of Parliament.

Re-appointment of a member for further period of five years

4. Except as herein otherwise provided all the provisions of the said recited Act, and of any other Act of Parliament relating to members of the Council of India, shall apply to members appointed under the provisions of this Act.

Former Acts to apply to future members

5. [...omitted as being spent].

6. Any member of Council may by writing under his hand, which shall be recorded in the minutes of the Council, resign his office ; * * * * *

Resignation of office

7. If at any time hereafter it should appear to Parliament expedient to reduce the number or otherwise to deal with the constitution of the said Council, no member of Council who has not served in his office for a period of ten years shall be entitled to claim any compensation for the loss of his office, or for any alteration in the terms and conditions under which the same is held.

8. The appointments of the ordinary members of the Governor-General's Council, and of the members of Council of the several presidencies * * * shall * * * be made by Her Majesty by warrant under her Royal Sign Manual.

(iii) THE INDIAN COUNCILS ACT, 1869

(32 & 33 Vict., Ch. 98)

AN ACT TO DEFINE THE POWERS OF THE GOVERNOR-GENERAL OF INDIA IN COUNCIL AT MEETINGS FOR MAKING LAWS AND REGULATIONS FOR CERTAIN PURPOSES.

Whereas doubts have arisen as to the extent of power of the Governor-General of India in Council to make laws binding upon native Indian subjects beyond the Indian territories under the dominion of Her Majesty,

And whereas it is expedient that better provision should be made in other respects for the exercise of the power of the Governor-General in Council,

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows :—

1. From and after the passing of this Act, the Governor-General of India in Council shall have power at meetings for the purpose of making laws and regulations to make laws and regulations for all persons being native Indian subjects of Her Majesty, Her heirs and successors, without and beyond, as well as within the Indian territories under the dominion of Her Majesty.

Power to make laws for native Indian subjects beyond the Indian territories.

2. No law heretofore passed by the Governor-General of India, or by the Governors of Madras and Bombay, respectively in Council, shall be deemed to be invalid solely by reason of its having reference to native subjects of Her Majesty not within the Indian territories under the dominion of Her Majesty.

3. Notwithstanding anything in the Indian Councils Act or in any other Act of Parliament contained, any law or regulation which shall hereafter be made by the Governor-General in Council in manner in the said Indian Councils Act provided shall not be invalid by reason only that it may repeal or affect any of the provisions of the said Act of the third and fourth years of King William the Fourth, chapter eighty-five, contained in sections eighty-one, eighty-two, eighty-three, eighty-four, eighty-five and eighty-six of the said Act.

(iv) THE INDIAN COUNCILS ACT, 1870

(33 Vict., Ch. 3.)

AN ACT TO MAKE BETTER PROVISIONS FOR MAKING LAWS AND REGULATIONS FOR CERTAIN PARTS OF INDIA, AND FOR CERTAIN OTHER PURPOSES RELATING THERETO.

Whereas it is expedient that provision should be made to enable Governor-General of India in Council to make regulations for the peace and good government of certain territories in India otherwise than at meetings for the purpose of making laws and regulations held under the provisions of the Indian Councils Act, 1861, and also for certain other purposes connected with the Government of India.

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. Every Governor of a Presidency in Council, Lieutenant-Governor, or Chief Commissioner, whether the Governorship, or Lieutenant-Governorship, or Chief Commissionership be now in existence or may hereafter be established, shall have power to propose to the Governor-General in Council drafts of any regulations, together with the reasons for proposing the same, for the peace and government of any

Power to Executive Government of British India to make regulations for certain parts thereof.

Former laws to be valid

Power to repeal or amend certain sections of 3 and 5, Will. 4, c. 85

part or parts of the territories under his Government or administration to which the Secretary of State for India shall from time to time by resolution in Council declare the provisions of this section to be applicable from a date to be fixed in such resolution.

And the Governor-General in Council shall take such drafts and reasons into consideration ; and when any such draft shall have been approved of by the Governor-General in Council and shall have received the Governor-General's assent, it shall be published in the *Gazette of India* and in the local Gazettes, and shall thereupon have like force of law and be subject to the like disallowances as if it had been made by the Governor-General of India in Council at a meeting for the purpose of making laws and regulations.

The Secretary of State for India in Council may from time to time withdraw such power from any Governor, Lieutenant-Governor or Chief Commissioner, on whom it has been conferred, and may from time to time restore the same as he shall think fit.

2. The Governor-General shall transmit to the Secretary of State for India in Council an authentic copy of every regulation which shall have been made under the provisions of this Act ; and all laws or regulations hereafter made by the Governor-General of India in Council, whether at a meeting for the purpose of making laws and

Copies of regulations to be sent to Secretary of State Subsequent enactments to control regulations

regulations, or under the said provisions, shall control and supersede any regulation in anywise repugnant thereto which shall have been made under the same provisions.

3. Whenever the Governor-General in Council shall hold a meeting for the purpose of making laws and regulations at any place within the limits of any territories now or hereafter placed under the administration of a Lieutenant-Governor or a Chief Commissioner, the Lieutenant-Governor or Chief Commissioner respectively shall be *ex-officio* an Additional Member of the Council of the Governor-General for that purpose, in excess (if

Lieutenant-Governors and Chief Commissioners to be members *ex-officio* of Governor-General's Council for the purpose of making laws and regulations

necessary) of the maximum number of twelve specified by the said Act.

4. Section forty-nine of the Act of the third and fourth years of King William the Fourth, chapter eighty

Section 49 of 3 and 4, Will. 4, c. 85 repealed
five, is hereby repealed.

5. Whenever any measure shall be proposed before the Governor-General of India in Council whereby the safety, tranquility, or interests of the British possessions in India, or any part thereof, may be, in the judgment of the said Governor-General essentially affected, and he shall be of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority in Council then present shall dissent from such opinion, the Governor-General may on his own authority and responsibility, suspend or reject the measure in part or in whole, or adopt and carry it into execution, but in every such case any two members of the dissentient majority may require that the said suspension, rejection, or adoption, as well as the fact of their dissent, shall be notified to the Secretary of State for India, and such notification shall be accompanied by copies of the minutes (if any) which the Members of the Council shall have recorded on the subject.

6. Whereas it is expedient that additional facilities should be given for the employment of natives of India, of proved merit and ability, in the Civil Service of Her Majesty in India : Be it enacted, that nothing in the "Act for the Government of India," twenty-one and twenty-two Victoria, chapter one hundred and six, or in the "Act to confirm certain appointments in India, and to amend the law concerning the Civil Service there," twenty-four and twenty-five Victoria, chapter fifty-four, or in any other Act of Parliament or other law now in force in India, shall restrain the authorities in India by whom appointments are or may be made to offices, places, and employments in the Civil Service of Her Majesty in India from appointing any native of India to any such office, place, or employment, although such native shall not have been admitted to the said Civil Service of India in manner in section thirty-two first mentioned Act provided, but subject to such rules as may be from time to time prescribed by the Governor-General in Council and sanctioned by the Secretary of State in Council, with the concurrence of a majority of members present ; and that for the purpose of this Act the words "natives of India" shall include any person born and domiciled within the dominions of Her Majesty in India, of parents habitually resident in India, and not established there for temporary purposes only ; and that it shall be

lawful for the Governor-General in Council to define and limit from time to time the qualification of 'native of India' thus expressed ; provided that every resolution made by him for such purpose shall be subject to the sanction of the Secretary of State in Council, and shall not have force until it has been laid for thirty days before both Houses of Parliament.

(v) THE INDIAN COUNCILS ACT, 1871

(34 & 35 Vict., Ch. 34.)

AN ACT TO EXTEND IN CERTAIN RESPECTS THE POWER OF LOCAL LEGISLATURES IN INDIA AS REGARDS EUROPEAN BRITISH SUBJECTS.

Whereas it is expedient that the power of making laws and regulations conferred on Governors of Presidencies in India in Council by the Indian Councils Act, 24 & 25 Vict., c. 67, sec. 42 should in certain respects be extended :

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. No law or regulation heretofore made or hereafter to be made by any Governor or Lieutenant-Governor in Council in India in manner prescribed by the aforesaid Act shall be invalid only by the reason that it confers on Magistrates, being justices of the peace, the same jurisdiction over European British subjects as such Governor or Lieutenant-Governor in Council, by regulation made as aforesaid, could have lawfully conferred or could lawfully confer on Magistrates in the exercise of authority over natives in the like cases.

2. When evidence has been given in any proceeding under this Act before a Magistrate, being a justice of the peace, which appears to be sufficient for the conviction of the accused person, being an European British subject, of an offence for which, if a native, he would under existing law be triable exclusively before the Court of Sessions, or which, in the opinion of the Magistrate is one which ought to be tried by the High Court, the accused person, if such European British

Power to Local Legislatures to confer jurisdiction over European British subjects to Magistrates in certain cases

Committal of defendant (being an European British subject) to the High Court. (Indian Act No. XXV of 1881, s. 226)

subject, shall be sent for trial by the Magistrate before the High Court.

3. And whereas by an Act passed by the Governor-General of India in Council, Indian Act No. XXII of 1870, it is provided that certain Acts heretofore passed by the Governors of Madras and Bombay respectively in Council, and by the Lieutenant-Governor of Bengal in Council, shall, so far as regards the liability of European British subject to be convicted and punished thereunder, be and be deemed to be as valid as if they had been passed by the Governor-General of India in Council at a meeting for the purpose of making laws and regulations: Be it further enacted, that the said Governors and Lieutenant-Governors in Council respectively shall have power to repeal and amend any of the said Acts to be passed under the provisions of the Indian Councils Act.

(vi) THE INDIAN COUNCILS ACT, 1874

(37 & 38 Vict., Ch. 91)

AN ACT TO AMEND THE LAW RELATING TO THE COUNCIL OF THE GOVERNOR-GENERAL OF INDIA.

Whereas it is expedient to amend the law relating to the Council of the Governor-General of India :

Be it enacted, etc., etc. * * * * * as follows :

1. It shall be lawful for Her Majesty, if she shall see fit, to increase the number of the ordinary members of the Council of the Governor-General of India to six, by appointing any person, from time to time, by warrant under Her Royal Sign Manual to be an ordinary member of the said Council in addition to the ordinary members thereof appointed under section three of the "Indian Councils Act, 1861," and under section eight of the Act of the thirty-second and thirty-third years of Her present Majesty, chapter ninety-seven. The law for the time being in force with reference to ordinary members of the Council of the Governor-General of India shall apply to the person so appointed by Her Majesty under this Act, who shall be called the member of Council for public works purposes.

Power to appoint
ordinary Member of
Governor-General in
Council for public
works purposes

Power to local
Legislatures to
amend and repeal
certain laws

2. Whenever a member of Council for public works purposes shall have been appointed under the first section

Power to reduce number of members of the Council of the Governor-General

of this Act, it shall be lawful for Her Majesty, if she shall see fit, to diminish, from time to time, the number of the ordinary members of the Council of the Governor-General of India to five, by

abstaining so long as she shall deem proper from filling up any vacancy or vacancies occurring in the offices of the ordinary members of the said Council appointed under section three of "The Indian Councils Act, 1861," and under section eight of the Act of the thirty-second and thirty-third years of Her present Majesty, chapter ninety-seven, not being a vacancy in the office of the ordinary member of Council required by law to be a barrister or a member of the Faculty of Advocates in Scotland, and whenever the Secretary of State for India shall have informed the Governor-General of India that it is not the intention of Her Majesty to fill up any vacancy, no temporary appointment shall be made to such vacancy under section twenty-seven of "Indian Councils Act, 1861," and if any such temporary appointment shall have been made previously to the receipt of such information, the tenure of office of the person temporarily appointed shall cease and determine from the time of the receipt of such information by the Governor-General.

3. Nothing in this Act contained shall affect the provisions of section eight of "The Indian Councils Act,

Power of Governor-General in respect of his Council, not affected

1861," or the provisions of section five of the Act of the thirty-third year of Her Majesty, chapter three, or any power or authority vested

by law in the Governor-General of India in respect of his Council or of the members thereof.

(vii) THE COUNCIL OF INDIA ACT, 1876

(39 Vict., Ch. 7.)

AN ACT TO AMEND THE LAW RELATING TO CERTAIN APPOINTMENTS TO THE COUNCIL OF INDIA.

Whereas by an Act of the thirty-second and thirty-third years of the reign of Her present Majesty, chapter ninety-seven (in this Act referred to as the Act of 1869), it was, among other things, provided that the members of the Council of India were to hold their offices for

a period of ten years, and for such further period as is in section three of the said Act mentioned,

And whereas, regard being had to the composition of the said Council contemplated in section ten of the Act of the twenty-first and twenty-second years of Her present Majesty, chapter one hundred and six (in this Act referred to as the Act of 1858), it is expedient to amend the said first-mentioned Act in certain particulars.

Be it enacted * * * * as follows :

1. Notwithstanding anything in the Act of 1869, the Secretary of State for India may, if he thinks fit, subject to the condition as to the number of appointments hereinafter laid down, appoint any person having professional or other peculiar qualifications to be a member of the said Council under this Act ; and every person so appointed shall hold his office in the same manner, and shall be entitled to the same salary, pension, and other rights and privileges, and be subject to the same disabilities, as if he had been elected or appointed before the passing of the Act of 1869.

Where any person appointed under this Act is at his appointment a member of the Council, his period of his service for the purposes of this Act shall be reckoned from the time of his first appointment to the Council.

The special reasons for every appointment under this Act shall be stated in a minute of the Secretary of State for India, and shall be laid before both Houses of Parliament. Not more than three persons appointed under this Act shall be members of the Council at the same time; nor shall the provisions of sections seven and ten of the Act of 1858, with reference to the members of the Council and the qualifications of the major part of the members, be affected by this Act.

(viii) THE INDIAN COUNCILS ACT, 1892

(55 & 56 Vict., Ch. 14.)

AN ACT TO AMEND THE INDIAN COUNCILS ACT, 1861.

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows :—

1. (1) The number of additional members of Council nominated by the Governor-General under the provisions of section ten of the Indian Councils Act, 1868, shall be such as to him may seem from time to time expedient, but shall not be less than ten nor more than sixteen; and the number of additional members of Council nominated by the Governors of the Presidencies of Fort St. George and Bombay respectively under the provisions of section twenty-nine of the Indian Councils Act, 1861, shall besides the Advocate-General of the presidency or officer acting in that capacity, be such as to the said Governors respectively may from time to time expedient, but shall not be less than eight nor more than twenty.

(2) It shall be lawful for the Governor-General in Council by proclamation from time to time to increase the number of Councillors whom the Lieutenant-Governors of the Bengal Division of the Presidency of Fort William and of the North-Western Provinces and Oudh respectively may nominate for their assistance in making laws and regulations: Provided always that not more than twenty shall be nominated for the Bengal Division, and not more than fifteen for the North-Western Provinces and Oudh.

(3) Any person resident in India may be nominated an additional member of Council under sections ten and twenty-nine of the Indian Councils Act, 1861, and this Act, or a member of the Council of the Lieutenant-Governor of any province to which the provisions of the Indian Councils Act, 1861, touching the making of laws and regulations, have been or are hereafter extended or made applicable.

(4) The Governor-General in Council may from time to time with the approval of the Secretary of State in Council, make regulations as to the conditions under which such nominations, or any of them, shall be made by the Governor-General, Governors, and Lieutenant-Governors, respectively, and prescribe the manner in which such regulations shall be carried into effect.

2. Notwithstanding any provision in the Indian Councils Act,

Modification of provisions of 24 & 25 Vict, c. 67 as to business at Legislative meetings

1861, the Governor-General of India in Council may from time to time make rules authorising at any meeting of the Governor-General's Council for the purpose of making laws and regulations the discussion of the Annual Financial Statement of the Governor-General

in Council and the asking of questions, but under such conditions and restrictions as to the subject or otherwise as shall be in the said rules prescribed or declared: And notwithstanding any provisions in the Indian Councils Act, 1861, the Governors in Council of Fort St. George and Bombay, respectively, and the Lieutenant-Governor of any province to which the provisions of the Indian Councils Act, 1861, touching the making of laws and regulations, have been made or are hereafter extended or made applicable, may from time to time make rules for authorising at any meeting of their respective Councils for the purpose of making laws and regulations the discussion of the Annual Financial Statement of their respective local Governments and the asking of questions, but under such conditions and restrictions as to subject or otherwise as shall in the said rules applicable to such Councils respectively be prescribed or declared. But no member at any such meeting of any Council should have power to submit or propose any resolution, or to divide the Council in respect of any such financial discussion, or the answer to any question asked under the authority of this Act or the rules made under this Act: Provided that any rule made under this Act by a Governor in Council, or by a Lieutenant-Governor, shall be submitted for and shall be subject to the sanction of the Governor-General in Council, and any rule made under this Act by the Governor-General in Council shall be submitted for and shall be subject to the sanction of the Secretary of State in Council: Provided also that rules made under this Act shall not be subject to alteration or amendment at meetings for the purpose of making laws and regulations.

3. It is hereby declared that in the twenty-second section of the Indian Councils Act, 1861, it was and is intended that the words "Indian territories now under the dominion of Her Majesty" should be read and construed as if the words "or hereafter" were and had at the time of the passing of the said Act been inserted next after the word "now" and further, that the Acts third and fourth, William the Fourth, Chapter eighty-five, and sixteenth and seventeenth Victoria Chapter ninety-five respectively, shall be read and construed as if at the date of the enactment thereof respectively, it was intended and had been enacted that the said Acts respectively should extend to and include the territories

Meaning of 24 &
25 Vict. c. 67, s. 22;
3 & 4 Will. IV, c.
85; & 16 & 17 Vict.
c. 95

acquired after the dates thereof respectively, by the East India Company, and should not be confined to the territories at the dates of the said enactments respectively in the possession and under the Government of the said Company.

4. Sections thirteen and thirty-two of the Indian Councils Act, 1861, are hereby repealed; and it is enacted
 Repeal that—

(1) If any additional member of Council or any members of the Council of a Lieutenant-Governor appointed under the said Act or this Act shall be absent from India or unable to attend to the duties of his office for a period of two consecutive months, it shall be lawful for the Governor-General, the Governor, or the Lieutenant-Governor to whose Council such additional member or members may have been nominated (as the case may be) to declare, by a notification published in the *Government Gazette*, that the seat in Council of such person has become vacant.

Power to fill up vacancy in number of additional members

(2) In the event of a vacancy occurring by the absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted of any such additional member or members of the Council of a Lieutenant-Governor, it shall be lawful for the Governor-General, for the Governor, or for the Lieutenant-Governor, as the case may be, to nominate any person as additional member or members, as the case may be, in his place; and every member so nominated shall be summoned to all meetings held for the purpose of making laws and regulations for the term of two years from the date of such nomination: Provided always that it shall not be lawful by such nomination, or by any nomination made under this Act, to diminish the proportion of non-official members directed by the Indian Councils Act, 1861, to be nominated.

5. The local legislature of any province in India may from time to time, by Acts passed under and subject to the provisions of the Indian Councils Act, 1861, and with the previous sanction of the Governor-General but not otherwise, repeal or amend as to that province any law or regulation made either before or after the passing of this Act by any authority in India other than that local legislature: Provided that an Act or a provision of an Act made by a local legislature, and

Powers of Indian provincial legislatures

subsequently assented to by the Governor-General in pursuance of the Indian Councils Act, 1861, shall not be deemed invalid by reason only of its requiring the previous sanction of the Governor-General under this section.

6. In this Act—The expression, “local
Definitions legislature”, means—

(1) The Governor-in-Council for the purpose of making laws and regulations of the respective provinces of Fort St. George Bombay : and

(2) The Council for the purpose of making laws and regulations of the Lieutenant-Governor of any province to which the provisions of the Indian Councils Act, 1861, touching the making of laws or regulations have been or hereafter extended or made applicable.

The expression “Province” means any presidency, division, province or territory over which the powers of any local legislature for the time being extend.

7. Nothing in this Act shall detract from or diminish the powers of the Governor-General in Council at meetings for the purpose of making laws and regulations.
Saving power of Governor-General in Council

8. This Act may be cited as the Indian Councils Act, 1892 ;
Short title and the Indian Councils Act, 1861, and this Act may be cited together as the Indian Councils Acts, 1861 and 1892.

(ix) THE INDIAN COUNCILS ACT, 1904

AN ACT TO AMEND INDIAN COUNCILS ACT OF 1874

Whereas it is etc. etc. . . . * * * Be it enacted * * * as follows :—

1. In section one of the Indian Councils Act, 1874, the words “who shall be called the member of council for public works” and in section two of the same Act the words ‘for public works’ are hereby repealed.

2. The Act shall be cited as the Indian Councils Act, 1904.

(x) THE COUNCIL OF INDIA ACT, 1907

AN ACT TO AMEND THE LAW AS TO THE COUNCIL OF INDIA

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual, and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. The Council of India shall consist of such number of members not less than ten and not more than fourteen, as the Secretary of State may from time to time determine.

2. In section ten of the Government of India Act, 1858 (21 and 22 Vict. c. 106), the words "more than five years" shall be substituted for the words "more than ten years."

3. Section thirteen of the same Act shall, as regards any member appointed after the passing of this Act, be read and construed as if the words one thousand pounds were substituted for the words one thousand two hundred pounds.

4. Section two of the Government of India Act, 1869 (32 and 33 Vict. c. 97), shall, as regards any appointment made after the passing of this Act, be read and construed as if the word "seven" were substituted for the word "ten."

5. The Council of India Act, 1876 (39 Vict. c. 7), and the Council of India Reduction Act, 1889 (52 and 53 Vict. c. 65), are hereby repealed.

6. This Act may be cited as the Council of India Act, 1907.

(xi) THE INDIAN COUNCILS ACT, 1909

AN ACT TO AMEND THE INDIAN COUNCILS ACTS 1861 AND 1892 AND THE GOVERNMENT OF INDIA ACT, 1838

[15th May 1909.]

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Amendment of constitution of Le- gislative Councils	1. (1) The additional members of the Councils for the purpose of making laws and regulations (hereinafter referred to as Legislative Councils) of the Governor-General and the Governors of Fort St. George and Bombay, and the members of the
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Legislative Councils already constituted, or which may hereafter be constituted, of the several Lieutenant-Governors of Provinces, instead of being all nominated by the Governor, or Lieutenant-Governor in manner provided by the Indian Councils Acts, 1861 and 1892, shall include members so nominated and also members elected in accordance with regulations made under this Act, and references in those Acts to the members so nominated and their nomination shall be construed as including references to the members so elected and their election.

(2) The number of additional members or members so nominated and elected, the number of such members required to constitute a quorum, the term of office of such members and the manner of filling up casual vacancies occurring by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise, shall, in the case of each such Council, be such as may be prescribed by regulations made under this Act :

Provided that the aggregate number of members so nominated and elected shall not, in the case of any Legislative Council mentioned in the first column of the First Schedule to this Act, exceed the number specified in the second column of that schedule:

<p>2. (1) The number of ordinary members of the Councils of the</p> <p>Constitution and procedure of execu- tive Councils of Governors of Fort Saint George and Bombay</p>	<p>Governors of Fort Saint George and Bombay shall be such number not exceeding four as the Secretary of State in Council may from time to time direct, of whom two at least shall be persons who at the time of their appointment have been in the service of the Crown in India for at least twelve years.</p>
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(2) If at any meeting of either of such Councils there is an equality of votes on any question the Governor or other person presiding shall have two votes or the casting vote.

<p>3. (1) It shall be lawful for the Governor-General in Council,</p> <p>Power to consti- tute provincial Exe- cutive Councils</p>	<p>with the approval of the Secretary of State in Council, by proclamation, to create a Council in the Bengal Division of the Presidency of Fort William for the purpose of assisting the Lieutenant-Governor in the executive government of the province, and by such proclamation—</p>
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(a) to make provision for determining what shall be the number (not exceeding four) and qualifications of the members of the Council ; and

(b) to make provision for the appointment of temporary or acting members of the Council during the absence of any member from illness or otherwise, and for the procedure to be adopted in case of a difference of opinion between a Lieutenant-Governor and his Council, and in the case of equality of votes, and in the case of a Lieutenant-Governor being obliged to absent himself from his Council from indisposition or any other cause.

(2) It shall be lawful for the Governor-General in Council, with the like approval, by a like proclamation to create a Council in any other province under a Lieutenant-Governor for the purpose of assisting the Lieutenant-Governor in the executive government of the province : Provided that before any such proclamation is made a draft thereof shall be laid before each House of Parliament for not less than sixty days during the session of Parliament, and, if before the expiration of that time an Address is presented to His Majesty by either House of Parliament against the draft or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new draft.

(3) Where any such proclamation has been made with respect to any province the Lieutenant-Governor may, with the consent of the Governor-General in Council, from time to time make rules and orders for the more convenient transaction of business in his Council, and any order made or act done in accordance with the rules and orders so made shall be deemed to be an act or order of the Lieutenant-Governor in Council.

(4) Every member of any such Council shall be appointed by the Governor-General, with the approval of his Majesty, and shall, as such be a member of the Legislative Council of the Lieutenant-Governor, in addition to the members nominated by the Lieutenant-Governor and elected under the provisions of this Act.

4. The Governor-General, and the Governor of Fort Saint George and Bombay, and the Lieutenant-Governor of every province respectively shall appoint a member of their respective councils to be Vice-
Appointments of Vice-Presidents

President thereof, and, for the purpose of temporarily holding and executing the office of Governor-General or Governor of Fort Saint George or Bombay and of presiding at meetings of Council in the absence of the Governor-General, Governor, or Lieutenant-Governor the Vice-President so appointed shall be deemed to be the senior member of Council and the member highest in rank, and the Indian Councils Act, 1861, and sections sixty-two and sixty-three of the Govern-

ment of India Act, 1833, shall have effect accordingly.

3 & 4 Will. 4. c.
85

5. (1) Notwithstanding anything in the Indian Councils Act, 1861, the Governor-General in Council, the Governors in Council of Fort Saint George and Bombay respectively, and the Lieutenant-Governor or Lieutenant-Governor in Council of every province, shall make rules authorising at any meeting of their respective legislative councils the discussion of the annual financial statement of the Governor-General in Council or of their respective Local Governments, as the case may be, and of any matter of general public interest, and the asking of questions, under such conditions and restrictions as may be prescribed in the rules applicable to the several councils.

(2) Such rules as aforesaid may provide for the appointment of a member of any such council to preside at any such discussion in the place of the Governor-General, Governor, or Lieutenant-Governor, as the case may be, and of any Vice-President.

(3) Rules under this section, where made by a Governor in Council, or by a Lieutenant-Governor, or a Lieutenant-Governor in Council, shall be subject to the sanction of the Governor-General in Council, and where made by the Governor-General in Council shall be subject to the sanction of the Secretary of State in Council, and shall not be subject to alteration or amendment by the Legislative Council of the Governor-General, Governor, or Lieutenant-Governor.

6. The Governor-General in Council shall, subject to the approval of the Secretary of State in Council, make regulations as to the conditions under which and manner in which persons resident in India may be nominated or elected as members of the Legislative Councils of the Governor-General, Governors, and as to the qualifications for being,

Power to make
regulations

and for being nominated or elected, a member of any such council, and as to any other matter for which regulations are authorised to be made under this Act, and also as to the manner in which those regulations are to be carried into effect. Regulations under this section shall not be subject to alteration or amendment by the Legislative Council of the Governor-General.

7. All proclamations, regulations and rules made under this Act, other than rules made by a Lieutenant-Governor made for the more convenient transaction of business in his Council shall be laid before both Houses of Parliament as soon as may be after they are made.

Laying of proclamations, etc., before Parliament

8. (1) This Act may be cited as the Indian Councils Act, 1909, and shall be construed with the Indian Council Acts, 1861 and 1892, and those Acts, the Indian Councils Act 1869, the Indian Councils Act, 1871, the Indian Councils Act, 1874, the Indian Councils Act, 1904, and this Act may be cited together as the Indian Councils Acts, 1861 to 1909.

Short title, construction, commencement, and repeal. 32 & 33 Vict. c. 98. 33 & 34 Vict. c. 34

(2) This Act shall come into operation on such date or dates as the Governor-General in Council, with the approval of the Secretary of State in Council, may appoint, and different dates may be appointed for different purposes and provisions of this Act and for different councils.

37 & 38 Vict. c. 91.
4 Edw. 7 c. 26

On the date appointed for the coming into operation of this Act as respects any Legislative Council, all the nominated members of the Council then in office shall go out of office, but may, if otherwise qualified, be renominated or be elected in accordance with the provisions of this Act.

(3) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

SCHEDULES

FIRST SCHEDULE

Maximum Numbers of Nominated and Elected Members of Legislative Councils

Legislative Council.	Maximum number.
Legislative Council of the Governor-General.	60
Legislative Council of the Governor of Fort Saint George ...	50
Legislative Council of the Governor of Bombay.	50
Legislative Council of the Lieutenant-Governor of the Bengal division of the Presidency of Fort William ...	50
Legislative Council of the Lieutenant-Governor of the United Provinces of Agra and Oudh ...	50
Legislative Council of the Lieutenant-Governor of the Provinces of Eastern Bengal and Assam ...	50
Legislative Council of the Lieutenant-Governor of the Province of the Punjab ...	30
Legislative Council of the Lieutenant-Governor of the Province of Burma ...	30
Legislative Council of the Lieutenant-Governor of any Province which may hereafter be constituted ...	30

SECOND SCHEDULE

Enactments repealed

Section and chapter.	Short title.	Extent of repeal.
24 and 25 Vict., C. 67.	The Indian Councils Act, 1861.	<p>In section ten, the words "not less than six nor more than twelve in number."</p> <p>In section eleven, the words "for the term of two years from the date of such nomination."</p> <p>In section fifteen, the words from "and the power of making laws and regulations" to "shall be present."</p> <p>In section twenty-nine, the words "not less than four nor more than eight in number."</p> <p>In section thirty, the words "for the term of two years from the date of such nomination."</p> <p>In section thirty-four, the words from "and power of making laws and regulations," to "shall be present."</p> <p>In section forty-five, the words from "and the power of making laws and regulations" to "shall be present."</p>
55 and 56 Vict., c. 14	The Indian Councils Act, 1892.	<p>Sections one and two.</p> <p>In section four, the words "appointed under the said Act or this Act" and paragraph (2).</p>

(xii) GOVERNMENT OF INDIA ACT, 1912

(2 & 3 Geo. 5)

AN ACT TO MAKE SUCH AMENDMENTS IN THE LAW RELATING TO THE GOVERNMENT OF INDIA AS ARE CONSEQUENTIAL ON THE APPOINTMENT OF A SEPARATE GOVERNOR OF FORT WILLIAM IN BENGAL, AND OTHER ADMINISTRATIVE CHANGES IN THE LOCAL GOVERNMENT OF INDIA. [25th June 1912.]

Whereas His Majesty has been pleased to appoint a Governor of the Presidency of Fort William in Bengal as delimited by a proclamation made by the Governor-General in Council and dated the twenty-second day of March nineteen hundred and twelve :

And whereas the Governor-General in Council by two further proclamations of the same date has constituted a new province under a Lieutenant-Governor styled the province of Bihar and Orissa, and has taken the province of Assam under the immediate authority and management of the Governor-General in Council.

And whereas it is expedient to declare what powers are exercisable by the Governor and Governor in Council of the presidency of Fort William in Bengal and to make other provisions with respect to the administrative changes effected as aforesaid :—

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows :—

1.—(1) It is hereby declared that the Governor and Governor in Council of the presidency of Fort William in Bengal shall within that presidency as so delimited as aforesaid, have all the rights, duties, functions, and immunities which the Governors and Governors in Council of the presidencies of Fort St. George and Bombay respectively possess, and all enactments relating to the Governors of those presidencies and the Councils (whether for executive or legislative purposes) thereof and the members of those Councils shall apply accordingly to the Governor of the presidency of Fort William in Bengal, and his Council and the members of that Council :

Provided that,—

(a) if the Governor-General in Council reserves to himself any powers now exercisable by him in relation to the Presidency of Fort

William in Bengal, those powers shall continue to be exercisable by the Governor-General in Council in the like manner and to the like extent as heretofore ; and

(b) It shall not be obligatory to nominate the Advocate-General of the presidency of Fort William in Bengal or any officer acting in that capacity to be a member of the legislative council of that Governor of that presidency.

(2). The power of the Governor-General in Council under section one of the Indian Presidency Towns Act 1815, 55 Geo. 3. c. 84 to extend the limits of the town of Calcutta shall be transferred to the Governor in Council of the presidency of Fort William in Bengal.

2. The provisions of sub-section(1) of section three of the Indian Councils Act, 1909 (which relate to the constitution of provincial executive councils), shall apply to the province of Bihar and Orissa in like manner as they applied to the province of the Bengal division of the presidency of Fort William.

Provisions as to the province of Bihar. 9 Edw. 7. c. 4

3. It shall be lawful for the Governor-General in Council by proclamation to extend subject to such modifications and adaptations as he may consider necessary, the provisions of the Indian Councils Acts 1861 to 1909, touching the making of laws and regulations, for the peace and good Government of provinces under Lieutenant-Governors (including the provisions as to the constitution of legislative councils for such provinces and the business to be transacted therein, to any territories for the time being under a chief commissioner, and where such provisions have been applied to any such territories the proviso to section three of the Government of India Act, 1854 (which relates to the alteration of laws and regulations in such territories) shall not apply to those territories.

Creation of legislative councils of chief commissioners 17 and 18 Vict. c. 77

4. (1) The enactments mentioned in Part I of the Schedule to this Act shall have effect subject to the amendments therein specified, and section fifty-seven of the East India Company Act, 1793, and section seventy-one of the Government of India Act, 1833 (which relate to the filling up of vacancies in the Indian Civil Service), and other enactments mentioned in Part II of that Schedule are hereby repealed.

Amendment and repeal of Acts and saving of 33 Geo. c. 52 and 4 Will. 4 c. 85

(2) Nothing in this Act or in the said recited proclamations shall affect the power of the Governor-General in Council of making new distributions and arrangement of territories into and among the various presidencies and lieutenant-governorships, and it is hereby declared that the said power extends to territories under the immediate authority and management of the Governor-General in Council as well as to territories subject to the several presidencies and lieutenant governorships.

5. This Act may be cited as the Government of India Act, 1912, and shall come into operation on such day as the Governor-General in Council with the approval of the Secretary of State in Council may appoint.

Short title and
commencement

SCHEDULE

PART I

Amendments.

In section fifty of the Indian Councils Act, 1861 (24 and 25 Vict. c. 67), after the words "then and in every such case." there shall be inserted the words "the Governor of the Presidency of Fort William in Bengal."

In the First Schedule to the Indian Councils Act, 1909 (9 Edw. 7. c. 4), there shall be inserted—

"Legislative Council of the Governor of Fort William in Bengal.	...	...	...	...	...	50
"Legislative Council of the Lieutenant-Governor of Bihar and Orissa	...	...	...	...	...	50."

PART II

Repeals.

Sections fifty-three and fifty-seven of the East India Company Act, 1793 (33 Geo. 3. c. 52).

In section sixty-two of the Government of India Act, 1833 (3 and 4 Will. 4. c. 285) the words "and Governor of the Presidency of Fort William in Bengal," and section seventy-one of the same Act.

In section fifty of the Indian Councils Act, 1861 (24 and 25 Vict. c. 67) the words "and Governor of the Presidency of Fort William in Bengal."

In the First Schedule to the Indian Councils Act, 1909 (9 Edw 7. c. 4), the following words :—

“ Legislative Council of the Lieutenant Governor of the Bengal Division of the Presidency of Fort William ... 50

“ Legislative Council of the Lieutenant-Governor of the Province of Eastern Bengal and Assam ... 50.”

VI

QUEEN VICTORIA'S PROCLAMATION, 1858

The following is the full text of the Proclamation of Queen Victoria in 1858 on the assumption of the direct Government of India by the Crown from the East India Company :—

PROCLAMATION, BY THE QUEEN IN COUNCIL, TO THE PRINCES, CHIEFS, AND PEOPLE OF INDIA (PUBLISHED BY THE GOVERNOR-GENERAL AT ALLAHABAD, ON NOVEMBER 1, 1858).

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the Colonies and Dependencies thereof in Europe, Asia, Africa, America, and Australasia, Queen, Defender of the Faith.

Whereas, for divers weighty reasons, We have resolved by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, to take upon Ourselves the Government of the Territories in India, heretofore administered in trust for us by the Honourable East India Company :

Now, therefore, We do by these presents notify and declare that, by the advice and consent aforesaid, We have taken upon Ourselves the said Government ; and We hereby call upon all Our subjects within the said territories to be faithful, and to bear true allegiance to Us, Our heirs and successors, and to submit themselves to the authority of those whom We may hereafter, from time to time, see fit to appoint to administer the Government of Our said territories, in Our name and on Our behalf ;

And We, reposing especial trust and confidence in the loyalty, ability, and judgment of Our right trusty and well beloved cousin and councillor, Charles John Viscount Canning, do hereby constitute and appoint him, the said Viscount Canning, to be Our first Viceroy and Governor-General in and over Our said territories, and to administer the Government thereof in Our name, and generally to act in Our name and on Our behalf, subject to such orders and Regulations as he shall, from time to time, receive from Us through one of Our principal Secretaries of State :

And We do hereby confirm in their several Offices, Civil and Military, all persons now employed in the service of the Honourable East India Company, subject to Our future pleasure, and to such Laws and Regulations as may hereafter be enacted.

We hereby announce to the Native Princes of India that all treaties and engagements made with them by or under the authority of the Honourable East India Company are by Us accepted, and will be scrupulously maintained ; and We look for the like observance on their part.

We desire no extension of Our present territorial possessions ; and while we will permit no aggression upon Our dominions or Our rights, to be attempted with impunity, We shall sanction no encroachment on those of others. We shall respect the rights, dignity, and honour of Native Princes as Our own ; and We desire that they, as well as Our own subjects, should enjoy that prosperity and that social advancement which can only be secured by internal peace and good Government.

We hold Ourselves bound to the natives of our Indian territories by the same obligations of duty which bind Us to all Our other subjects ; and those obligations, by the blessing of Almighty God, We shall faithfully and conscientiously fulfil.

Firmly relying Ourselves on the truth of Christianity, and acknowledging with gratitude the solace of religion, We disclaim alike the right and the desire to impose Our convictions on any of Our subjects. We declare it to be Our Royal will and pleasure that none be in any wise favoured, none molested or disquieted by reason of their religious faith or observances ; but that all shall alike enjoy the equal and impartial protection of the Law : and We do strictly charge and enjoin all those who may be in authority under Us, that they abstain from all interference with the religious belief or worship of any of Our subjects, on pain of Our highest displeasure.

And it is Our further will that, so far as may be, Our subjects, of whatever race or creed, be freely and impartially admitted to offices in Our service, the duties of which they may be qualified, by their education, ability, and integrity, duly to discharge.

We know, and respect, the feelings of attachment with which the natives of India regard the lands inherited by them from their ancestors ; and We desire to protect them in all rights connected therewith, subject to the equitable demands of the State ; and We will see that generally, in framing and administering the law, due regard be paid to the ancient rights, usages, and customs of India.

We deeply lament the evils and misery which have been brought upon India by the acts of ambitious men, who have deceived their coun-

trymen, by false reports, and led them into open rebellion. Our power has been shewn by the suppression of that rebellion in the field ; We desire to shew Our mercy, by pardoning the offences of those who have been thus misled, but who desire to return to the path of duty.

Already in one province, with a view to stop the further effusion of blood, and to hasten the pacification of our Indian dominions, Our Viceroy and Governor-General has held out the expectation of pardon, on certain terms, to the great majority of those who, in the late unhappy disturbances, have been guilty of offences against Our Government, and has declared the punishment which will be inflicted on those whose crimes place them beyond the reach of forgiveness. We approve and confirm the said act of Our Viceroy and Governor-General, and do further announce and proclaim as follows :—

Our clemency will be extended to all offenders, save and except those who have been, or shall be, convicted of having directly taken part in the murder of British subjects. With regard to such, the demands of justice forbid the exercise of mercy.

To those who have willingly given asylum to murderers, knowing them to be such, or who may have acted as leaders or instigators in revolt, their lives alone can be guaranteed ; but in apportioning the penalty due to such persons, full consideration will be given to the circumstances under which they have been induced to throw off their allegiance, and large indulgence will be shewn to those whose crimes may appear to have originated in too credulous acceptance of the false reports circulated by designing men.

To all others in arms against the Government We hereby promise unconditional pardon, amnesty, and oblivion of all offence against Ourselves, Our Crown and dignity, on their return to their homes and peaceful pursuits.

It is Our Royal pleasure that these terms of Grace and Amnesty should be extended to all those who comply with their conditions before the first day of January next.

When by the blessing of Providence, internal tranquillity shall be restored, it is Our earnest desire to stimulate the peaceful industry of India, to promote works of public utility and improvement and to administer its Government for the benefit of all our subjects residents therein. In their prosperity will be Our Strength ; in their contentment Our security ; and in their Gratitude Our best reward. And may the God of all power grant to Us, and to those in authority under Us, strength to carry out these Our Wishes for the good of Our people.

VII

LORD MORLEY'S REFORM DESPATCH

The following is the full text of Lord Morley's Despatch on the Proposals for Constitutional Reform sent by the Governor-General in Council on the 1st October 1908 :—

INDIA OFFICE, LONDON,
27th November, 1908.

Public, No. 193.

TO

HIS EXCELLENCY THE RIGHT HONOURABLE THE
GOVERNOR-GENERAL OF INDIA IN COUNCIL

Proposals for Constitutional Reform

MY LORD,

I have to acknowledge the important Despatch of the 1st October, 1908, in which you had submitted for approval and decision a group of constitutional reforms framed by Your Excellency in Council, in pursuance of a policy initiated more than two years ago. Your proposals in their present shape are the outcome of a tentative project placed, in August last year, in the hands of Local Governments in India with instructions to consult important bodies and individuals representative of various classes of the community before putting their own conclusions before the Government of India. Those instructions, as you are very evidently justified in assuring me, were carried out with great care and thoroughness. After examining, moreover, the enormous mass of material gathered together in a prolonged operation, I gladly recognise the admirable industry, patience, thought and candour with which that material has been sifted by your Government and worked out into practical proposals, liberal in their spirit and comprehensive in their scope. I have taken all the pains demanded by their importance to secure special consideration of them in Council. It is a sincere satisfaction to me to find myself able to accept the substantial part of Your Excellency's scheme, with such modifications as would naturally occur to different minds in handling problems of remarkable difficulty in themselves and reasonably open to a wide variety of solution.

THE IMPERIAL ADVISORY COUNCIL

The original proposal of an Imperial Advisory Council was based on the interesting and attractive idea of associating ruling Chiefs and territorial magnates of British India in guardianship of common and

Imperial interests and as a means of promoting more intimate relations among component parts of the Indian Empire. The general opinion of those whose assent and co-operation would be indispensable has proved adverse, and Your Excellency in Council now considers that the project should for the present not be proceeded with.

You still favour an Imperial Council composed only of ruling Chiefs. Lord Lytton made an experiment in this direction, but it remained without successful result. Lord Curzon afterwards proposed to create a Council composed exclusively of Princes contributing Imperial Service Troops, and deliberating on that subject exclusively. The opinion is pronounced that this also is likely to be unfruitful and ineffectual in practice. Your Excellency's project is narrower than the first of these two and wider than the second. I confess that, while entirely appreciating and sympathising with your object, I judge the practical difficulties in the way of such a Council assembling under satisfactory conditions to be considerable—expense, precedence, and housing, for instance, even if there were no others—yet if not definitely discontinued with a view to assembly it could possess little or no reality. It would obviously be a mistake to push the project unless it commands the clear assent and approval of those whose presence in the Council would be essential to its success, and the opinions expressed in the replies with which you have furnished me lead me to doubt whether that condition can be secured. But in case Your Excellency still favours this proposal, which is in itself attractive I do not wish to express dissent at this stage, and if, after consultation with the leading Chiefs, you are able to devise a scheme that is at once acceptable to them and workable in practice, I am not inclined to place any obstacle in the way of a full and fair trial and, in any event, the doubt I have expressed must not be taken as discouraging consultation with individual Chiefs according to the existing practice, for nobody with any part to play in Indian Government can doubt the manifold advantages of still further developing not only amicable but confidential relations of this kind with the loyal rulers in Indian States, possessed as they are of such peculiar authority and experience.

PROVINCIAL ADVISORY COUNCILS

Next I agree with Your Excellency in the judgment that the question of a Council of notables for British India only should not be entertained. I am inclined, furthermore, for my own part, to doubt whether the creation of Provincial Advisory Councils is likely to prove an experiment of any marked actual value. The origin of the demand for bodies of that character, whatever the strength of such a demand amounts to, is undoubtedly the desire for greater facilities in the discussion of public

measures. Your Excellency indicates what strikes me as pointing in a more hopeful direction in the proposition that this claim for increased facilities of discussion should be met "rather by extending the powers of the existing Legislative Councils than by setting up large rival Councils which must to some extent conflict with them." Large or small, such rivalry would be almost certain to spring up, and from the first the new species of Council would be suspected as designed to be a check upon the old. As in the case of ruling Chiefs or of notables in British India, so here, informal consultation with the leading men of a locality would have most or all of the advantages of an Advisory Council without the many obvious disadvantages of duplicating political machinery.

ENLARGEMENT OF LEGISLATIVE COUNCILS

From these proposals I pass to what is, and what you declared to be, the pith and substance of the Despatch under reply. "The enlargement of the Legislative Councils" you say, "and the extension of their function to the discussion of administrative questions are the widest, most deep-reaching and most substantial features of the scheme, which we now put forward." This perfectly correct description evoked and justified the close scrutiny to which these features have been subjected in my Council, and I am glad to believe that the result reveals few elements of material difference.

Your Government have now felt bound to deal first with the Imperial Legislative Council and from that work downwards to the Councils in the Provinces. I gather, however, from your despatch of the 21st March, 1907, that you would at that time have preferred, as Lord Lansdowne had done in 1892, to build up the higher fabric on the foundation of the Provincial Councils. In your circular letter of the 24th August, 1907, you observed that the most logical and convenient mode of dealing with the question would have been first to discuss and settle the composition, the electorates and the powers of the Provincial Legislative Councils, and then to build up on the basis of these materials a revised constitution for the Imperial Council. In the absence of proposals from the Local Governments and Administrations, you were precluded from adopting this course, and, therefore, you set tentatively before them the line on which first the Legislative Council of the Governor-General and thereafter those of Governors and Lieutenant-Governors might be constituted.

In your present letter you have followed the same order, but with the full materials before me such as are now supplied by local opinions, it appears to be both more convenient and, as you said, more logical to

begin with the Provincial Councils and afterwards to consider the constitution of the Legislative Council of the Governor-General.

PROVINCIAL LEGISLATIVE COUNCILS

The first question that arises touches the principle of representation. This is fully discussed in paragraphs 18 to 20, 26 to 31, and 34 of your letter. Citing previous discussions of the subject and referring to the precedent of the measures taken to give effect to the Statute of 1892, you adhere to the opinion that, in the circumstances of India, representation by classes and interests is the only practicable method of embodying the principle in the constitution of the Legislative Councils (paragraph 18.) You justly observe that the principle to be borne in mind is that election by the wishes of the people is the ultimate object to be secured, whatever may be the actual machinery adopted for giving effect to it (paragraph 29.) You consider that for certain limited interests, Corporations of Presidency towns, Universities, Chambers of Commerce, planting communities and the like limited electorates must exist as at present, and you foresee no serious obstacle in carrying out arrangements for that purpose. Difficulties come into view when you go beyond these limited electorates and have to deal with large and widespread interests or communities, such as the landholding and professional classes, or with important minorities, such as Mahomedans in most provinces in India, and Sikhs in the Punjab. You dwell upon the great variety of conditions in the various provinces of the Indian Empire and the impossibility of applying any uniform system throughout, and your conclusion generally appears to be that class electorates should be framed where this is practicable and likely to lead to good results, and in their failure or defect, it will be necessary to have recourse to nomination.

With the general principles advanced by Your Excellency in this chapter of our discussion, I am in entire accord. I agree that to some extent class representation must be maintained in the limited electorates to which you refer, and here, as you point out, no serious obstacle is to be anticipated. I agree also that the Legislative Council should reflect the leading elements of the population at large and that no system of representation would be satisfactory if it did not provide for the presence in the Councils of sufficient representatives of communities so important as are the Mahomedans and the landed classes. But, in examining your plans for obtaining their representation, I am struck with the difficulty of securing satisfactory electoral bodies under them and with the extent to which, as you expect, nomination will be demanded to supply the deficiencies of election. The same awkwardness and perplexity appear in obtaining satisfactory representation of the Indian commercial

classes were, as is found generally throughout India with very few exceptions, they have not established Associations or Chambers to represent their interests.

The case of landholders is discussed in paragraphs 27 to 29 of your letter with immediate reference to the Imperial Legislative Council, and the situation is just the same—if separate representation is to be secured—for local Councils. You “find it impossible to make any definite proposal which would admit of general application.” (Para. 27). You see difficulties in devising a constituency that should consist only of landholders deriving a certain income from land (Para. 28), and you point out with much force the objections to election by voluntary Associations. In these observations I agree, and especially in your remark that the recognition of Associations as electoral agencies should be regarded as a provisional arrangement to be maintained only until some regular electorate can be formed.

The same difficulties, as you observe in paragraph 30, encounter the proposal to have a special electorate for Mahomedans. In some Provinces, as in Bombay the Mahomedans are so scattered that common organisation for electoral purposes is thought impracticable. In other Provinces, it is proposed to found a scheme partly on a property qualification and partly on a literary attainment; in others, again it is suggested that recourse might be had to voluntary associations. One difficulty in regard to Mahomedans is not mentioned in your letter, for, the provision in any Province of a special electorate giving them a definite proportion of the seats on the Councils, might involve the refusal to them in that Province of a right to vote in the territorial electorates of which rural and Municipal Boards will afford the basis. If that were not done, they would evidently have a double vote, and this would probably be resented by other classes of the population.

ELECTORAL COLLEGES

Without rejecting the various expedients suggested by Your Excellency for adoption in order to secure the adequate representation of these important classes on the Councils, I suggest for your consideration that the object in view might be better secured, at any rate in the more advanced Provinces in India, by a modification of the system of a popular electorate founded on the principle of Electoral Colleges. The use of this method is not in itself novel. It already exists in the group of District Boards and of Municipalities, which in several Provinces return members to the Provincial Councils. The elec-

tion is not committed to the Boards or Municipalities directly. These bodies choose electors, who then proceed to elect the representative of the group. I will briefly describe the scheme that at present commends itself to me, and in order to make the method of working clear I will assume hypothetical figures for a given Province. Let it be supposed that the total population of the Province is 20 millions, of whom 15 millions are Hindus and 5 millions Mahomedans, and the number of members to be elected 12. Then since the Hindus are to Mahammadans as three to one, nine Hindus should be elected to three Mahammadans. In order to obtain these members, divide the Province into three electoral areas, in each of which three Hindus and one Mahammadan are to be returned. Then in each of these areas constitute an Electoral College consisting of, let us say, a hundred members. In order to preserve the proportion between the two religions, 75 of these should be Hindus and 25 Mahammadans. This Electoral College should be obtained by calling upon the various electorates, which might be (a) substantial land-owners paying not less than a fixed amount of land-revenue, (b) the members of rural or subdivisional Boards, (c) the members of District Boards and (d) the members of Municipal Corporations, to return to it such candidates as they desired, a definite number being allotted to each electorate. Out of these offering themselves and obtaining votes, the 75 Hindus who obtained the majority of votes should be declared members of the college, and the 25 Mahammadans who obtained the majority should similarly be declared elected. If the Mussalmans returned did not provide 25 members for the Electoral College, the deficiency would be made good by nomination. Having thus obtained an Electoral College containing 75 Hindus and 25 Mussalmans, that body would be called upon to elect three representatives for the Hindus and one for the Mahomedans. Each member of the College would have only one vote and could vote for only one candidate. In this way, it is evident that it would be in the power of each section of the population to return a member in the proportion corresponding to its own proportion to the total population.

In the same way, the desired proportion could be obtained of any representatives of any particular interest, as for instance, of landowners. All that is necessary would be to constitute the Electoral College in such a way that the number of electors representing the land-owning interest should bear to the total number the same proportion as the members of Council representing the interest to be elected bear to the total number to be elected.

In this manner, minorities would be protected against exclusion by

majorities and all large and important sections of the population would have the opportunity of returning members in proportion to their ratio to the total population. Their choice could in that event be exercised in the best possible way, that, namely, of popular election, instead of requiring Government to supply deficiencies by the dubious method of nomination.

I do not wish definitely to prescribe such a scheme for adoption, whether locally or universally, but I commend it to your consideration. It appears to offer an expedient by which the objections against a system of nomination may be avoided, and it would work through a choice freely exercised by the electorate at large instead of by artificial electorates specially constituted for the purpose. No doubt it removes the primary voter by more than one stage from the ultimate choice and it does not profess to be simple. I can only say that it is quite as simple as any scheme for representation of minorities can ever be. The system of a single vote, which is an essential part of it is said to work satisfactorily in places where it is in existence, and it is easy of apprehension by the electors. It would have several great advantages. It would bring the classes specially concerned within the popular electorate, and so meet the criticisms of the Hindus to which you refer in paragraph 30 ; second, it establishes a principle that would be an answer to further claims for representation by special classes or associations ; third, it would ensure the persons chosen being actually drawn from the locality that the Electoral College represents ; fourth, it would provide a healthy stimulus to interest in local self-government by linking up local bodies (rural and Municipal Boards) more closely with the Provincial Legislative Councils. To this end, it might be provided that the candidate for election to the Provincial Council must himself have taken part in local administration.

The due representation of the Indian mercantile community on which you touch in paragraph 31 of your letter might be included in the scheme if the commercial classes fail to organise themselves as you suggest that they may arrange to do, in Associations similar to the European Chambers of Commerce.

To meet possible objections founded on the difficulty of bringing together Electoral Colleges to vote in one place, I may add that this is not contemplated in the scheme. You refer at the close of paragraph 28 to the success of the Calcutta University in organising the election of Fellows by a large number of graduates scattered all over India. The votes of the electors in each College could, I imagine, be collected in the same manner without requiring them to assemble at a common centre.

OFFICIAL MAJORITY TO BE DISPENSED WITH

From the electoral structure I now turn to the official element in the constitution of Provincial Legislative Councils, dealt with in paragraphs 43 to 56 of your letter. I first observe that in all of them you provide for a bare official majority, but you contemplate that in ordinary circumstances, only the number of official members necessary for the transaction of business shall be able to attend. The first question, therefore, is the necessity of maintaining in these Councils the majority of officials.

We have before us to begin with the leading fact that in the important Province of Bombay there is in the Council, as at present composed, no official majority, and that the Bombay Government, even in the smaller of its alternative schemes presented to Your Excellency in Council, is willing to dispense with such a majority. Considering the character of the legislation ordinarily coming before the Provincial Council, is it not possible with due representation given to the various classes and interests in the community to do without a majority of officials. After a careful consideration, I have come to the conclusion that in the Provincial Councils such a majority may be dispensed with provided that a substantial official majority is permanently maintained in the Imperial Legislative Council.

I do not conceal from myself the risks in such an arrangement. The non-official majority may press legislation of a character disapproved by the Executive Government. This should be met by the exercise of the power to withhold assent possessed by the head of the Government. Although the Local Legislature is vested with power to make laws for the peace and good government of the territories constituting the Province, still the range of subjects is considerably narrowed by the statutory exclusions now in force. Thus, for example, the Local Legislature may not without the previous sanction of the Governor-General make or take into consideration any law affecting the Public Debt of India or the customs duties or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the Government of India, or regulating currency or postal or telegraph business, or altering in any way the Indian Penal Code, or affecting religion or religious rites or usages, or affecting the discipline or maintenance of Naval or Military forces, or dealing with patents or copyrights, or the relations of the Government with foreign Princes or States. It is difficult to see how any measures of such urgency that delay might work serious mischief can come before a Provincial Council, for, mere opposition to a useful and beneficial project would not come within this description. On the

other hand, and perhaps more often, there may be opposition on the part of the non-official Members to legislation that the Government desires. With a Council, however, representing divergent interests and realising, together with its increased powers, greater responsibility a combination of all the non-official members to resist a measure proposed by the Government would be unlikely, and some non-officials at least would probably cast their votes on the side of the Government. If, however, a combination of all the non-official members against the Government were to occur, that might be a very good reason for thinking that the proposed measure was really open to objection, and should not be proceeded with.

Your Excellency will recall since you came into the authority of Governor-General, an Act proposed by a Local Government which a representative Legislative Council would almost certainly have rejected. Your Excellency's action in withholding assent from the Act shows that in your judgment it would have been an advantage if the Local Government had been induced by a hostile vote to reconsider their Bill. If, in spite of such hostile vote, the comparatively rare case should arise where immediate legislation were still thought absolutely necessary, then the constitution, as it at present stands, provides an adequate remedy. The Governor-General in Council to-day possesses a concurrent power to legislate for any Province, and though I strongly favour a policy that would leave to each local Legislature the duty of providing for its own requirements, still I recognise in this power an ample safeguard, should, under exceptional circumstances, a real demand for its exercise arise.

CONSTITUTION OF PROVINCIAL COUNCILS

This decision will make it necessary to modify to some extent the constitution of the several Provincial Councils proposed by you and will enable you to secure a wider representation. Subject to consideration of these details (which will not involve the postponement of the proposed Parliamentary legislation for the amendment of the Indian Councils Act, 1892, and for other purposes), I am ready to accept generally the proposals for the numbers and the constitution of the Councils set forth in your letter.

THE IMPERIAL LEGISLATIVE COUNCIL

Your proposals in relation to the Imperial Legislative Council are necessarily entitled to the greatest weight. I am glad to find myself able to accept them practically in their entirety. While I desire to liberalise as far as possible the Provincial Councils, I recognise that it is an essential condition of this policy that the Imperial supremacy

shall be in no degree compromised. I must, therefore, regard it as essential that Your Excellency's Council, in its legislative as well as its executive character, should continue to be so constituted as to ensure its constant and uninterrupted power to fulfil the constitutional obligations that it owes and must always owe to His Majesty's Government and to the Imperial Parliament. I see formidable drawbacks that have certainly not escaped Your Excellency to the expedient which you purpose, and I cannot regard with favour the power, of calling into play an official majority while seeming to dispense with it. I am unable to persuade myself that to import a number of gentlemen to vote down something upon which they may or may not have heard the arguments will prove satisfactory. To secure the required relations, I am convinced that a permanent official majority in the Imperial Legislative Council is absolutely necessary, and this must outweigh the grave disadvantages that induce us to dispense with it in the Provincial Legislatures. It need not be in any sense an overwhelming majority, and this Your Excellency does not seek, but it must be substantial as it is certainly desirable that the Governor-General should be removed from the conflict of the division list and that the fate of any measure or resolution should not rest on his vote alone.

I have already dealt in the earlier paragraphs of this Despatch with elective principle, and it will be for Your Excellency to consider how far the popular electorate can be utilised for the return to your Legislative Council of landholders and Mahomedans. Some modifications of the scheme suggested for the Provinces will no doubt be necessary and the Electoral Colleges would probably have to be on the basis of Provinces and not of Divisions, and the case of the Central Provinces would probably (in view of the disappearance of Advisory Councils) have to be met by nomination until Local Legislature is provided.

I accept your proposals for securing the representation of commerce, both European and Indian.

I also agree to your proposals as to nomination, but it will be a matter for your consideration whether, to meet requirement of a substantial official majority, the number of nominated officials should not be raised.

Your plan for securing occasional representation for the interests of minorities such as the Sikhs, the Parsis, the Indian Christians, the Buddhists and the Domiciled Community meets with my entire approval, and I am in complete sympathy with your intention sometimes to appoint one or two experts in connection with legislation impending before the Councils.

INCREASED FACILITIES FOR DEBATE

I turn to the proposals contained in paragraphs 57-59 of your Despatch affording further facilities for debate. This subject, as Your Excellency remarks, was not dealt with in the earlier correspondence out of which your present proposals arise, but I am entirely in accord with Your Excellency's Government in regarding it as of cardinal importance.

The existing law which confines discussion, except on the occasion of the Annual Financial Statement, to the Legislative proposals actually before the Council, imposes a restriction that I am convinced is no longer either desirable or necessary. The plan of Your Excellency's Government contemplates a wide relaxation of this restriction, and in sanctioning it generally, I am confident that these increased facilities, judiciously used, will be pronounced of the greatest advantage, not only by Councils and those whom they represent, but also by Government who will gain additional opportunities both of becoming acquainted with the drift of public opinion and of explaining their own actions.

EFFECT OF THE RESOLUTIONS

Taking the proposals in detail, I agree that the Resolutions to be moved should take the form of recommendations to Government, having only such force and effect as Government after consideration shall deem due to them. The introduction and discussion of Resolutions should not extend to subjects removed from the cognizance of Legislative Councils by statute, and must obviously be subject to rules and restrictions. These, as Your Excellency observes, may best be laid down, in the first place, when the rules of business are drawn up and developed thereafter as experience may show to be desirable. Meanwhile, I agree generally with the conditions suggested in paragraph 59 of your Despatch. I must, however, remark upon the first of the suggested conditions that isolated incidents of administration or personal questions may be and often are at the same time matters of public and general importance. It would, in my opinion, be sufficient to lay down that Resolutions must relate to matters of public and general importance, inasmuch as the President of the Council will have the power of deciding finally whether any proposed Resolution does, or does not, satisfy this condition.

INTERPELLATIONS

In respect of rules on the asking of questions, I have come to the conclusion that subject to such restriction as may be found requisite in practice and to the existing general powers of the President, the asking of supplementary questions should be allowed. Without these, a system

of formal questions met by formal replies must inevitably tend to become unreal and ineffective and in an assembly in which, under proper safeguards, free discussion and debate is permitted and encouraged, there can be no sufficient reason for prohibiting that method of eliciting information and expressing indirectly the opinions and wishes of the questioners.

DISCUSSION OF THE IMPERIAL BUDGET

Special importance attaches to rules as to the discussion of the Imperial Budget and I recognise with much satisfaction the liberality of the proposals that you have placed before me. The changes under this head constitute a notable step in the direction of giving to the representatives of Indian opinion a part in the most important administrative operation of the political year. I approve the dates suggested for the promulgation of the Financial Statement and for the beginning and ending of its discussion in Committee, and I anticipate valuable results from the knowledge which your Government will acquire in these debates of the views of those whom the proposed measures will chiefly and directly affect, and which it will be able to utilise in shaping its final financial proposals for the year. Generally, also, I approve the rules sketched in paragraph 64 for the regulation of discussions in Committee and of the moving of Resolutions and I concur in your opinion that the form of procedure should be such as to show clearly that the power of executive action resides exclusively in Government, who, while inviting the free expression of opinion in the form of Resolutions do not thereby forego any part of the power and responsibility which has been and must continue to be in their hands.

PROVINCIAL BUDGETS

Your proposals for the discussion of the Provincial Budgets seem entirely sound. As in the case of the Imperial Budget, so with respect to the Provincial Finances, I observe with satisfaction that provision is made for full and free discussion and for the consideration by Government of the results of such discussion before the final proposals for the year are framed, and I believe that under the system suggested by you the Local Governments will retain that ultimate control over the financial policy of their Provinces, without which not only the authority of the Government of India but also that of the Secretary of State in Council and Parliament would inevitably disappear.

FURTHER REFORMS

Your Excellency claims for your scheme as whole "that it will really and effectively" associate the people of India in the work not "only

of occasional legislation but of actual every-day administration." The claim is abundantly justified, yet the scheme is not and hardly pretends to be a complete representation of the entire body of changes and improvements in the existing system that are evidently present to the minds of some of those whom your Government has consulted and that, to the best of my judgment, are now demanded by the situation described in the opening words of the Despatch. It is evidently desirable, Your Excellency will agree, to present our reformed constitutional system as a whole. From this point of view, it seems necessary to attempt without delay an effectual advance in the direction of Local self-Government.

LOCAL SELF-GOVERNMENT

The principles that should inspire and regulate measures with this aim can hardly be laid down in sounder or clearer terms than in the Resolution published by the Government of India on the 18th May, 1882. I do not know where to look for a better expression of the views that should govern our policy under this important head, and I will venture to quote some passages in this memorable deliverance. Explaining the proposal for Local self-Government of that date the Government of India place themselves on ground which may well be our ground also. "It is not primarily," they say, "with a view to improvement in administration that this measure is put forward and supported, it is chiefly desirable as an instrument of political and popular education;" and again, "there appears to be great force in the argument that so long as the chief Executive officers are, as a matter of course, Chairmen of the Municipal and District Committees there is little chance of these committees affording any effective training to their members in the management of local affairs or of the non-official members taking any real interest in local business. The non-official members must be led to feel that real power is placed in their hands and that they have real responsibilities to discharge." This anticipation has been, to some extent, warranted by experience. Funds have not existed for an efficient Executive staff. The official element within the local bodies has been in many places predominant. Non-official members have not been induced to such an extent as was hoped, to take a real interest in local business because their powers and their responsibilities were not real. If Local self-Government has so far been no marked success as a training ground, it is mainly for the reason that the constitution of the local bodies departed from what was affirmed in the Resolution to be "the true principle" that "the control should be exercised from without rather than from within; the Government should revise and check the acts of local bodies but not dictate them." I have no doubt that the Government of India

